

CHAPTER 38

AN ACT concerning the provision of cable television service and telecommunications service, amending R.S.40:48-1, P.L.1971, c.198, and amending and supplementing P.L.1972, c.186.

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

1. R.S.40:48-1 is amended to read as follows:

Ordinances; general purpose.

40:48-1. Ordinances; general purpose. The governing body of every municipality may make, amend, repeal and enforce ordinances to:

Finances and property. 1. Manage, regulate and control the finances and property, real and personal, of the municipality;

Contracts and contractor's bonds. 2. Prescribe the form and manner of execution and approval of all contracts to be executed by the municipality and of all bonds to be given to it;

Officers and employees; duties, terms and salaries. 3. Prescribe and define, except as otherwise provided by law, the duties and terms of office or employment, of all officers and employees; and to provide for the employment and compensation of such officials and employees, in addition to those provided for by statute, as may be deemed necessary for the efficient conduct of the affairs of the municipality;

Fees. 4. Fix the fees of any officer or employee of the municipality for any service rendered in connection with his office or position, for which no specific fee or compensation is provided. In the case of salaried officers or employees, such fee shall be paid into the municipal treasury;

Salaries instead of fees; disposition of fees. 5. Provide that any officer or employee receiving compensation for his services, in whole or in part by fees, whether paid by the municipality or otherwise, shall be paid a salary to be fixed in the ordinance, and thereafter all fees received by such officer or employee shall be paid into the municipal treasury;

Maintain order. 6. Prevent vice, drunkenness and immorality; to preserve the public peace and order; to prevent and quell riots, disturbances and disorderly assemblages; to prohibit the consumption of alcoholic beverages by underage persons on private property pursuant to section 1 of P.L.2000, c.33 (C.40:48-1.2);

Punish beggars; prevention of loitering. 7. Restrain and punish drunkards, vagrants, mendicants and street beggars; to prevent loitering, lounging or sleeping in the streets, parks or public places;

Auctions and noises. 8. Regulate the ringing of bells and the crying of goods and other commodities for sale at auction or otherwise, and to prevent disturbing noises;

Swimming; bathing costume; prohibition of public nudity. 9. Regulate or prohibit swimming or bathing in the waters of, in, or bounding the municipality, and to regulate or prohibit persons from appearing upon the public streets, parks and places clad in bathing costumes or robes, or costumes of a similar character; regulate or prohibit persons from appearing in a state of nudity upon all lands within its borders which are under the jurisdiction of the State including, without limitation, all lands owned by, controlled by, managed by or leased by the State;

Prohibit annoyance of persons or animals. 10. Regulate or prohibit any practice tending to frighten animals, or to annoy or injure persons in the public streets;

Animals; pounds; establishment and regulation. 11. Establish and regulate one or more pounds, and to prohibit or regulate the running at large of horses, cattle, dogs, swine, goats and other animals, and to authorize their impounding and sale for the penalty incurred, and the costs of impounding, keeping and sale; to regulate or prohibit the keeping of cattle, goats or swine in any part of the municipality; to authorize the destruction of dogs running at large therein;

Hucksters. 12. Prescribe and regulate the place of vending or exposing for sale articles of merchandise from vehicles;

Building regulations; wooden structures. 13. Regulate and control the construction, erection, alteration and repair of buildings and structures of every kind within the municipality; and to prohibit, within certain limits, the construction, erection or alteration of buildings or structures of wood or other combustible material;

Inflammable materials; inspect docks and buildings. 14. Regulate the use, storage, sale and disposal of inflammable or combustible materials, and to provide for the protection of life and property from fire, explosions and other dangers; to provide for inspections of buildings, docks,

wharves, warehouses and other places, and of goods and materials contained therein, to secure the proper enforcement of such ordinance;

Dangerous structures; removal or destruction; procedure. 15. Provide for the removal or destruction of any building, wall or structure which is or may become dangerous to life or health, or might tend to extend a conflagration; and to assess the cost thereof as a municipal lien against the premises;

Chimneys and boilers. 16. Regulate the construction and setting up of chimneys, furnaces, stoves, boilers, ovens and other contrivances in which fire is used;

Explosives. 17. Regulate, in conformity with the statutes of this State, the manufacture, storage, sale, keeping or conveying of gunpowder, nitroglycerine, dynamite and other explosives;

Firearms and fireworks. 18. Regulate and prohibit the sale and use of guns, pistols, firearms, and fireworks of all descriptions;

Soft coal. 19. Regulate the use of soft coal in locomotives, factories, power houses and other places;

Theatres, schools, churches and public places. 20. Regulate the use of theatres, cinema houses, public halls, schools, churches, and other places where numbers of people assemble, and the exits therefrom, so that escape therefrom may be easily and safely made in case of fire or panic; and to regulate any machinery, scenery, lights, wires and other apparatus, equipment or appliances used in all places of public amusement;

Excavations. 21. Regulate excavations below the established grade or curb line of any street, not greater than eight feet, which the owner of any land may make, in the erection of any building upon his own property; and to provide for the giving of notice, in writing, of such intended excavation to any adjoining owner or owners, and that they will be required to protect and care for their several foundation walls that may be endangered by such excavation; and to provide that in case of the neglect or refusal, for 10 days, of such adjoining owner or owners to take proper action to secure and protect the foundations of any adjacent building or other structure, that the party or parties giving such notice, or their agents, contractors or employees, may enter into and upon such adjoining property and do all necessary work to make such foundations secure, and may recover the cost of such work and labor in so protecting such adjacent property; and to make such further and other provisions in relation to the proper conduct and performance of said work as the governing body or board of the municipality may deem necessary and proper;

Sample medicines. 22. Regulate and prohibit the distribution, depositing or leaving on the public streets or highways, public places or private property, or at any private place or places within any such municipality, any medicine, medicinal preparation or preparations represented to cure ailments or diseases of the body or mind, or any samples thereof, or any advertisements or circulars relating thereto, but no ordinance shall prohibit a delivery of any such article to any person above the age of 12 years willing to receive the same;

Boating. 23. Regulate the use of motor and other boats upon waters within or bounding the municipality;

Fire escapes. 24. Provide for the erection of fire escapes on buildings in the municipality, and to provide rules and regulations concerning the construction and maintenance of the same, and for the prevention of any obstruction thereof or thereon;

Care of injured employees. 25. Provide for the payment of compensation and for medical attendance to any officer or employee of the municipality injured in the performance of his duty;

Bulkheads and other structures. 26. Fix and determine the lines of bulkheads or other works or structures to be erected, constructed or maintained by the owners of lands facing upon any navigable water in front of their lands, and in front of or along any highway or public lands of said municipality, and to designate the materials to be used, and the type, height and dimensions thereof;

Lifeguard. 27. Establish, maintain, regulate and control a lifeguard upon any beach within or bordering on the municipality;

Appropriation for life-saving apparatus. 28. Appropriate moneys to safeguard people from drowning within its borders, by location of apparatus or conduct of educational work in harmony with the plans of the United States volunteer life-saving corps in this State;

Fences. 29. Regulate the size, height and dimensions of any fences between the lands of adjoining owners, whether built or erected as division or partition fences between such lands, and whether the same exist or be erected entirely or only partly upon the lands of any such adjoining owners, or along or immediately adjacent to any division or partition line of such lands. To provide, in such ordinance, the manner of securing, fastening or shoring such fences, and for surveying the land when required by statute, and to prohibit in any such ordinance the use at a height of under 10 feet from the ground, of any device, such as wire or cable, that would be dangerous to pedestrians, equestrians, bicyclists, or drivers of off-the-road vehicles, unless that device is clearly visible to pedestrians, equestrians, bicyclists or drivers of off-the-road vehicles. In the case of fences thereafter erected contrary to the provisions thereof, the governing body may provide for a penalty for the violation of such ordinance, and in the case of such fence or fences erected or existing at the time of the passage of any such ordinance, may provide therein for the removal, change or alteration thereof, so as to make such fence or fences comply with the provisions of any such ordinance;

Advertise municipality. 30. Appropriate funds for advertising the advantages of the municipality;

Government Energy Aggregation Programs. 31. Establish programs and procedures pursuant to which the municipality may act as a government aggregator pursuant to sections 40 through 45 of P.L.1999, c.23 (C.48:3-89 through C.48:3-94). Notwithstanding the provisions of any other law, rule or regulation to the contrary, a municipality acting as a government aggregator pursuant to P.L.1999, c.23 (C.48:3-49 et al.) shall not be deemed to be a public utility pursuant to R.S.40:62-24 or R.S.48:1-1 et seq. or be deemed to be operating any form of public utility service pursuant to R.S.40:62-1 et seq., to the extent such municipality is solely engaged in the provision of such aggregation service and not otherwise owning or operating any plant or facility for the production or distribution of gas, electricity, steam or other product as provided in R.S.40:62-12;

Joint municipal action on consent for the provision of cable television service. 32. Establish programs and procedures pursuant to which a municipality may act together with one or more municipalities in granting municipal consent for the provision of cable television service pursuant to the provisions of the "Cable Television Act," P.L.1972, c.186 (C.48:5A-1 et seq.) as amended and supplemented. Notwithstanding the provisions of any other law, rule or regulation to the contrary, two or more municipalities acting jointly pursuant to the provisions of P.L.1972, c.186 shall not be deemed a public utility pursuant to R.S.48:1-1 et seq., to the extent those municipalities are solely engaged in granting municipal consent jointly and are not otherwise owning or operating any facility for the provision of cable television service as provided in P.L.1972, c.186;

Private cable television service aggregation programs. 33. Establish programs and procedures pursuant to which a municipality may employ the services of a private aggregator for the purpose of facilitating the joint action of two or more municipalities in granting municipal consent for the provision of cable television service provided that any such municipality shall adhere to the provisions of the "Cable Television Act," P.L.1972, c.186 (C.48:5A-1 et seq.) as amended and supplemented, and to the provisions of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.) as amended and supplemented. Notwithstanding the provisions of any other law, rule or regulation to the contrary, a municipality that employs the services of a private aggregator pursuant to the provisions of P.L.1972, c.186 shall not be deemed a public utility pursuant to R.S.48:1-1 et seq., to the extent that the municipality is solely engaged in employing the services of a private aggregator for the purpose of facilitating the joint action of two or more municipalities in granting municipal consent and is not otherwise owning or operating any facility for the provision of cable television service as provided in P.L.1972, c.186.

2. Section 10 of P.L.1971, c.198 (C.40A:11-10) is amended to read as follows:
C.40A:11-10 Joint agreements for provision and performance of goods and services; cooperative marketing; authorization.

10. Joint agreements for provision and performance of goods and services; cooperative

marketing; authorization.

(a) (1) The governing bodies of two or more contracting units may provide by joint agreement for the provision and performance of goods and services for use by their respective jurisdictions.

(2) The governing bodies of two or more contracting units providing sewerage services pursuant to the "sewerage authorities law," P.L.1946, c.138 (C.40:14A-1 et seq.), the "municipal and county utilities authorities law," P.L.1957, c.183 (C.40:14B-1 et seq.), R.S.58:14-1 et seq. or R.S.40:63-68 et seq. may provide by joint agreement for the purchase of goods and services related to sewage sludge disposal.

(3) The governing body of two or more contracting units providing electrical distribution services pursuant to and in accordance with R.S.40:62-12 through R.S.40:62-25, may provide by joint agreement for the provision or performance of goods or services related to the distribution of electricity.

(4) The governing bodies of two or more contracting units may provide for the cooperative marketing of recyclable materials recovered through a recycling program.

(5) The governing bodies of two or more contracting units may provide by joint agreement for the purchase of the services of a private aggregator for the purpose of facilitating the joint action of two or more municipalities in granting municipal consent for the provision of cable television service pursuant to R.S.40:48-1 et seq. and the "Cable Television Act," P.L.1972, c.186 (C.48:5A-1 et seq.) as amended and supplemented.

(b) The governing body of any contracting unit may provide by joint agreement with the board of education of any school district for the provision and performance of goods and services for use by their respective jurisdictions.

(c) Such agreement shall be entered into by resolution adopted by each of the participating bodies and boards, which shall set forth the categories of goods or services to be provided or performed, the manner of advertising for bids and of awarding of contracts, the method of payment by each participating body and board, and other matters deemed necessary to carry out the purposes of the agreement.

(d) Each participating body's and board's share of expenditures for purchases under any such agreement shall be appropriated and paid in the manner set forth in the agreement and in the same manner as for other expenses of the participating body and board.

3. Section 3 of P.L.1972, c.186 (C.48:5A-3) is amended to read as follows:

C.48:5A-3 Definitions.

3. As used in this act, except as the context may otherwise clearly require or indicate:

a. "Board" means the Board of Public Utilities of this State.

b. "Office" means the Office of Cable Television established by this act.

c. "Director" means the Director of the Office of Cable Television.

d. "Cable television system" or "CATV system" means any facility within this State which is operated or intended to be operated to perform the service of receiving and amplifying the signals broadcast by one or more television stations and redistributing such signals by wire, cable or other device or means for accomplishing such redistribution, to members of the public who subscribe to such service, or distributing through its facility any television signals, whether broadcast or not; or any part of such facility. The term "facility" as used in this subsection includes all real property, antennae, poles, wires, cables, conduits, amplifiers, instruments, appliances, fixtures and other personal property used by a CATV company in providing service to its subscribers and customers.

e. "Cable television reception service" means the simultaneous delivery through a CATV system of the signals of television broadcast stations to members of the public subscribing to such service, which service may include additional nonbroadcast signals delivered as a part of the service with no additional charge.

f. "Cable communications system" or "cable communications service" means any communications service other than cable television reception service delivered through the facilities of a CATV system and for which charges in addition to or other than those made for cable television reception service are made or proposed to be made.

g. "Cable television company" or "CATV company" means any person owning, controlling, operating or managing a cable television system, and the term "person" as used herein shall be construed, without limiting the generality thereof, to include specifically any agency or instrumentality of this State or of any of its political subdivisions; but this definition shall not include a telephone, telegraph or electric utility company regulated by the Board of Public Utilities in a case where it merely leases or rents or otherwise provides to a CATV company wires, conduits, cables or pole space used in the redistribution of television signals to or toward subscribers or customers of such CATV company.

h. "Highway" includes every street, road, alley, thoroughfare, way or place of any kind used by the public or open to the use of the public.

i. "Certificate" means a certificate of approval issued, or which may be issued, by the board pursuant to this act.

j. "Cable television service" includes the definitions of cable television reception service and cable communications service herein, as well as the provision of any other impulse or signal by a cable television company or other service lawfully provided, utilizing the facilities of the system.

k. "Basic cable service" means any service tier which includes the retransmission of local television broadcast signals.

l. "Hearing impaired individual" means an individual who, because of injury to, disease of, or defect in the inner, middle or outer ear, or any combination thereof, has suffered a loss of hearing acuity such that the individual cannot receive linguistic information without amplification, dubbing or captions.

m. "In series connection" means a connection where the coaxial service wire entering the residence of a subscriber connects first to a television receiver or monitor, with the television receiver or monitor being connected by coaxial wire to a video cassette recorder or other auxiliary equipment or where the coaxial service wire connects first to a video cassette recorder or auxiliary equipment, with the equipment being connected to a television receiver or monitor and where no external splitting device is used.

n. "Municipality" means one municipality acting singularly or two or more municipalities acting jointly in the granting of municipal consent for the provision of cable television service in accordance with the provisions of the "Cable Television Act," P.L.1972, c.186 (C.48:5A-1 et seq.) as amended and supplemented.

o. "Open video system" means a facility consisting of a set of transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable television service to multiple subscribers within a municipality and which has been certified by the Federal Communications Commission as being in compliance with Part 76 "Multichannel Video and Cable Television Service" of Title 47 of the Code of Federal Regulations.

p. "Private aggregator" means a duly-organized business or non-profit organization authorized to do business in this State that enters into a contract with two or more municipalities for the purpose of facilitating the joint action of those municipalities in granting municipal consent for the provision of cable television service to those municipalities.

4. Section 19 of P.L.1972, c.186 (C.48:5A-19) is amended to read as follows:

C.48:5A-19 Certificate of approval; transferability; duration; automatic renewal.

19. A certificate of approval issued by the board shall be nontransferable, except by consent of the board; shall specify the area to which it applies and the municipal consents upon which it is based, and shall be valid for 15 years from the date of issuance or 20 years from the date of issuance if the board certifies that a CATV company has implemented an open video system in accordance with 47 U.S.C. s.573 within one year after receiving a municipal consent, or until the expiration, revocation, termination or renegotiation of any municipal consent upon which it is based, whichever is sooner. But amendment of the terms of a municipal consent by mutual consent and in conformity with the procedures specified in this act during the term for which it was issued shall not require the issuance of a new certificate of approval. A CATV company holding a certificate based upon a municipal consent with a provision for automatic renewal for

a term not exceeding 10 years beyond its expiration date or 15 years beyond its expiration date if the board certifies that the CATV company has implemented an open video system in accordance with 47 U.S.C. s.573, shall be entitled to automatic reissuance of a certificate for such term, unless it shall forfeit such entitlement by violation of any terms of this act, regulations issued pursuant thereto, or by the terms of the municipal consent.

5. Section 25 of P.L.1972, c.186 (C.48:5A-25) is amended to read as follows:

C.48:5A-25 Conformance of municipal consent with act.

25. A municipal consent issued pursuant to this act shall conform in form and substance to all requirements of this act and of rules, regulations and orders duly promulgated by the director. It shall specify with particularity the territory to which it applies, and the term for which it is issued. Such term shall not exceed 15 years or 20 years if the board certifies that a CATV company has implemented an open video system in accordance with 47 U.S.C. s.573 within one year after receiving a municipal consent; but provision may be included for automatic renewal at the expiration thereof for an additional term not exceeding 10 years or 15 years if the board certifies that the CATV company has implemented an open video system in accordance with 47 U.S.C. s.573, unless either the municipality or the company shall not later than 60 days before the expiration of the initial term serve upon the other party notice of its intention not to accept such renewal. No CATV company whose municipal consent or renewal thereof has expired shall be authorized to continue its operations unless prior to such expiration it has obtained a certificate of approval from the board authorizing such continued operation, except that such a CATV company which has initiated proceedings to obtain such certification from the board prior to the expiration of the municipal consent may continue its operations pending the final disposition of such proceedings.

C.48:5A-64 Contract between private aggregator and municipalities.

6. a. A private aggregator may enter into a contract with two or more municipalities for the purpose of facilitating the joint action of those municipalities in granting municipal consent for the provision of cable television service, pursuant to the "Cable Television Act," P.L.1972, c.186 (C.48:5A-1 et seq.) as amended and supplemented, subject to the requirements of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.).

b. A private aggregator shall register with the office, which shall include the filing of basic information pertaining to the aggregator, such as name, address, telephone number, business or organization background, and business or organization profile. A private aggregator shall provide annual updates of this information to the office.

7. Within 12 months of the date of enactment of P.L.2003, c.38 (C.48:5A-64 et al.) and after soliciting public testimony, the Board of Public Utilities shall prepare a study that examines:

a. The technical and regulatory issues associated with classifying every high-speed Internet service as a "telecommunications service," as defined in section 2 of P.L.1991, c.428 (C.48:2-21.17);

b. A requirement that a cable television company shall provide its competitors non-discriminatory access to the CATV company's cable communications system;

c. The state of multi-channel video programming competition between different facilities-based and non-facilities-based telecommunications companies in New Jersey, such as cable television companies, digital broadcast satellite companies, local exchange telecommunications companies and interexchange telecommunications carriers and, in particular, the state of competition in New Jersey among the dominant cable television companies for the same customers; and

d. The technical and regulatory issues associated with promoting multi-channel video programming competition in New Jersey by local exchange telecommunications companies and interexchange telecommunications carriers.

The study shall be transmitted to the Governor, the President of the Senate, the Speaker of the General Assembly, the Minority Leader of the Senate, the Minority Leader of the General

Assembly, and the members of the Senate Commerce Committee and the Assembly Telecommunications and Utilities Committee, or their respective successor committees.

C.48:5A-26.1 Record of complaints, annual report.

8. a. In addition to the requirements as provided in section 26 of P.L.1972, c.186 (C.48:5A-26), the board shall, upon notice, by order in writing require every CATV company to keep for at least a period of one year, a record of complaints received at the CATV company's office, which shall include the name and address of the subscriber, the date, the nature of complaint, any corrective action taken if required, and the final disposition of the complaint. The record shall be available for inspection by the staff of the office. Copies of such record shall be provided to the staff of the office upon request.

b. Every CATV company shall furnish to the office annually a detailed report of the number and character of complaints made by customers and communicated to the CATV company. In meeting such requirement, the board shall establish a procedure for CATV companies to record and characterize those customer complaints using a uniform reporting methodology and containing those matters as the board may from time to time prescribe. Copies of the report shall be forwarded to the Governor and members of the Legislature. All reports submitted to the office shall comply with the provisions of the "Cable Subscriber Privacy Protection Act," P.L.1988, c.121 (C.48:5A-54 et seq.).

9. This act shall take effect on the 120th day following enactment, except that the provisions of sections 4 and 5 of this act shall not apply to any certificate of approval issued before the effective date of this act or to any application for a certificate of approval filed with the board within 365 days following the enactment date of this act, and the Board of Public Utilities may take such anticipatory actions as may be necessary for the implementation of this act.

Approved April 14, 2003.