S T A T E O F N E W Y O R K

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Introduced by M. of A. MORELLE, DESTITO, CAHILL, CLARK, CYMBROWITZ, BOYLAND, DelMONTE, BENJAMIN, BING, BRENNAN, COLTON, KOON -- Multi-Sponsored by -- M. of A. GUNTHER, MAGEE, McENENY, SCHIMMINGER, WRIGHT -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT in relation to enacting the New York state broadband development authority act; to amend the state finance law, in relation to funds and accounts of the authority; and providing for the repeal of such provisions upon expiration thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Short title. This act shall be known and may be cited as the "New York State Broadband Development Authority Act".

S 2. Declaration of policy. The legislature finds that certain areas of this state are not being adequately served with broadband services and that, for the benefit of the people of this state and the improvement of their health, welfare, and living conditions, the improvement of the economic and educational welfare of this state, and the improvement of its public safety and security, it is essential that broadband infrastructure be expanded to provide broadband services throughout this state and that the private sector should be encouraged to invest in the deployment of broadband services and networks and that financing by this authority will encourage broadband investment. This act shall provide a method to assure that economic, technological, and logistical integrated broadband services are provided throughout this state on a nondiscriminatory basis. The provision of affordable broadband services and networks will assure the long-term growth of and the enhancement and delivery of services by the educational, medical, commercial, and governmental entities within this state, including, but not limited to, municipalities and counties, public safety facilities, judicial and criminal facilities, telemedical facilities, schools, colleges, univer-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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sities, hospitals, libraries, community centers, businesses, nonprofit organizations, and residential properties. To increase the speed and availability at which affordable broadband services become available in this state, it is declared to be a valid public purpose to assist in the financing and refinancing of the private and public sectors' development of a statewide broadband infrastructure.

S 3. Definitions. 1. "Authority" means the New York state broadband development authority.

2. "Capital reserve fund requirement" means the fund amount requirement that may be established in the resolution authorizing notes or bonds for which a capital reserve fund has been established under section 95-h of the state finance law. The required amount shall not exceed the maximum amount of principal and interest maturing and becoming due in a succeeding calendar year on the notes or bonds secured in whole or in part by the fund.

3. "Broadband developer" means a person selected by the authority to acquire, construct, develop, and create any part of the broadband infrastructure.

4. "Broadband infrastructure" means all facilities, hardware, and software and other intellectual property necessary to provide broadband services in this state, including, but not limited to, voice, video, and data.

5. "Broadband operator" means a person selected by the authority to operate any part of the broadband infrastructure.

6. "Broadband services" means those services, including, but not limited to, voice, video, and data, that provide capacity for transmission in excess of 200 kilobits per second in at least one direction regardless of the technology or medium used, including, but not limited to, wireless, copper wire, fiber optic cable, or coaxial cable. If voice transmission capacity is offered in conjunction with other services utilizing transmission in excess of 200 kilobits per second, the voice transmission capacity may be less than 200 kilobits per second.

7. "Development costs" means the costs associated with the broadband infrastructure that have been approved by the authority and include, but are not limited to, all of the following:

(a) the costs for planning, acquiring, leasing, constructing, maintaining, and operating of the broadband infrastructure.

(b) payments for options to purchase, deposits on contracts of purchase, and payments for the purchases of properties for the broadband infrastructure.

(c) financing, refinancing, acquisition, demolition, construction, rehabilitation, and site development of new and existing buildings.

(d) carrying charges during construction.

(e) purchases of hardware, software, facilities, or other expenses related to the broadband infrastructure.

(f) legal, organizational, and marketing expenses, project manager and clerical staff salaries, office rent, and other incidental expenses.

(g) payment of fees for preliminary feasibility studies and advances for planning, engineering, and architectural work.

(h) any other costs and expenses necessary for the acquisition, construction, maintenance, and operation of all or portions of the broadband infrastructure.

8. "Person" means an individual, corporation, limited or general partnership, joint venture, or limited liability company or a governmental entity, including state authorities, municipalities, counties, and townships, police, fire and other public safety organizations, judicial

entities, medical entities, schools, colleges, universities, hospitals, libraries, community centers, and local economic development entities. Except to the extent that state authorities, police, fire and other public safety organizations, judicial entities, medical entities, schools, colleges, universities, hospitals, and libraries may constitute state entities, person does not include this state.

S 4. New York state broadband development authority. 1. A board to be known as the "New York state broadband development authority" is hereby created. Such board shall be a body corporate and politic constituting a public benefit corporation. The authority shall consist of 13 members who shall be residents of New York state. The head or designee of the state consumer protection board, the department of education, the department of health, the department of labor, the department of public service, the state emergency management office, and the office for technology shall serve as members. The remaining six members shall be appointed in the following manner: two shall be appointed by the governor, two shall be appointed by the temporary president of the senate, and two shall be appointed by the speaker of the assembly.

2. These members shall have experience in telecommunications and will be subject to the limitations in the public officers law. The appointed members shall serve for terms of four years each, provided that the members first appointed shall serve until the thirty-first day of December of the third year following the year of their appointment. Vacancies, occurring otherwise than by expiration of term of office, shall be filled for the unexpired terms. The members of the authority shall receive no compensation for their services but shall be reimbursed for all their actual and necessary expenses incurred in connection with the carrying out of the purposes of this act. The powers as set forth in the by-laws of the board shall be established and vested in and be exercised by the members of the authority at an initial meeting duly called and held and eleven members shall constitute a quorum.

3. Notwithstanding any inconsistent provision of any general, special or local law, ordinance, resolution or charter, no officer, member or employee of the state or of any public authority shall forfeit his or her office or employment by reason of his or her acceptance of appointment as a member, officer or employee of the authority, nor shall service as such member, officer or employee be deemed incompatible or in conflict with such office, membership or employment.

4. The authority and its corporate existence shall continue until terminated by law, provided, however, that no such termination shall take effect so long as the authority shall have bonds or other obligations outstanding unless adequate provision has been made for the payment thereof.

5. It is hereby determined and declared that the authority and the carrying out of its powers and duties are in all respects for the benefit of the people of the state of New York for the improvement of their health, welfare and prosperity and that such purposes are public purposes and that the authority is and will be performing an essential governmental function in the exercise of the powers conferred upon it by this act.

6. The board shall hold at least three regular meetings every year. The chairperson, or in his or her absence the vice-chairperson, may call a special meeting by notice in writing served personally upon the other members of the board at least 48 hours prior to such meeting. All meetings of the board shall be subject to article 7 of the public officers law.

7. The purposes of the authority are to:

(a) assist through financing and refinancing the expansion of broadband infrastructure services to residential, commercial, public, and nonprofit customers in this state.

(b) authorize the issuance of bonds and notes to finance or refinance the private and public sectors' development of the broadband infrastructure.

(c) authorize the making of loans and joint venture and partnership arrangements to broadband developers and broadband operators.

(d) authorize the imposition and collection of rents, charges, and fees for the services furnished by the broadband infrastructure in conjunction with financing entered into by the authority.

(e) enter into joint venture and partnership arrangements and partnerships to acquire, construct, maintain, and operate the broadband infrastructure.

(f) assist broadband developers and operators with all other matters necessary for the acquisition, construction, maintenance, and operation of the broadband infrastructure.

(g) continuously evaluate all types of technologies in order to encourage the widest deployment of broadband services and broadband infrastructure in this state.

(h) make broadband services to schools, libraries, and underserved areas a priority under authority financing programs.

(i) insure that the financing and refinancing of the development of broadband services under this act includes provisions that small businesses and that each region of this state have an equal opportunity to receive financing and refinancing.

S 5. 1. The powers of the authority shall include all those necessary to carry out and effectuate the purposes of this act, including, but not limited to, all of the following:

(a) to borrow money and issue bonds and notes to fund operations of the authority, to finance or refinance part or all of the development costs of the broadband infrastructure, to refinance existing debt for technology that constitutes a part of or is related to the broadband infrastructure, and to secure bonds and notes by mortgage, assignment, or pledge of any of its revenues and assets.

(b) to invest any money of the authority at the authority's discretion, in any obligations determined proper by the authority, and name and use depositories for its money.

(c) to enter into joint venture and partnership arrangements with persons that will acquire, construct, develop, maintain, and operate all or portions of the broadband infrastructure.

(d) to be designated the state program manager for federal telecommunications assistance, to represent this state in negotiations with the federal government regarding telecommunications assistance, and to receive and distribute federal funding, including loans, grants, and other forms of funding and assistance on this state's behalf.

(e) to receive and distribute state or local funding including grants, loans, general appropriations, or an appropriation made for the purposes of this act.

(f) to make loans and to enter into any joint venture and partnership arrangements with broadband developers and broadband operators that will acquire, construct, maintain, and operate all or portions of the broadband infrastructure.

(g) to provide operating assistance to make broadband services more affordable to broadband developers, broadband operators, and broadband

customers, in conjunction with broadband infrastructure financed by the authority.

(h) to impose and collect charges, fees, or rentals for the services furnished by those portions of the broadband infrastructure financed by the authority under this act.

(i) to set construction, operation, and financing standards for the broadband infrastructure in connection with authority financing and to provide for inspections to determine compliance with those standards.

(j) to acquire from any person interests in real or personal property necessary for the operation of the authority.

(k) to procure insurance against any loss in connection with the broadband infrastructure and any other property, assets, or activities of the authority.

(l) to sue and be sued, to have a seal, and to make, execute, and deliver contracts, conveyances, and other instruments necessary to the exercise of the authority's powers.

(m) to enforce financial, operational, warranty, security, lease, and guaranty terms and conditions established under financings by the authority. The authority may acquire, construct, develop, lease, create, and maintain all or portions of the broadband infrastructure and acquire from any person interests in real and personal property.

(n) to make and amend bylaws.

(o) to indemnify and procure insurance indemnifying any members of the board of the authority from personal liability by reason of their service as a board member.

(p) to investigate, evaluate, and assess the current broadband infrastructure and the future broadband infrastructure needs of this state and to encourage and participate in aggregation strategies for the broadband services of all public entities and nonprofit corporations in this state to maximize the interconnectivity and efficiencies of the broadband infrastructure.

2. Notwithstanding any other provision of this act, the authority shall not make loans to, or enter into any joint venture and partnership arrangements or participation with, any governmental entity or nonprofit organization except in connection with the financing or refinancing of development costs for that allocable portion of the broadband infrastructure used or to be used exclusively by governmental entities or nonprofit organizations, including, but not limited to, universities, colleges, hospitals, school districts, public safety agencies, judicial organizations, libraries, cities, townships, and counties. No allocable portion of the broadband infrastructure financed by a loan to a governmental entity or a nonprofit organization shall be used to serve residential, business, or other commercial customers.

3. Notwithstanding any other provision of this act, except in connection with financing or refinancing under subdivision two of this section or enforcement procedures authorized under paragraph (m) of subdivision one of this section, the authority shall acquire real or personal property constituting portions of the broadband infrastructure only in connection with the participation of persons other than governmental entities or nonprofit organizations through joint ventures and partnership arrangements, or other co-ownership arrangements and only if the participation is necessary to assure availability of financing or refinancing derived from the issuance by the authority of bonds or notes, the interest on which is exempt from taxation under the United States internal revenue code, and the financing derived from the tax-exempt bonds or notes is allocated only to those development costs relat-

ing to that portion of the broadband infrastructure that is to be used by governmental bodies or nonprofit organizations.

4. The authority shall establish a seed capital loan program to make capital loans to persons planning to apply to the authority for financing of broadband infrastructure. Priority for the seed capital loan program shall be given for developments targeted to underserved areas. During the initial 2 years of operations, the authority shall designate a minimum of $500,000.00 to be targeted to rural underserved areas and a minimum of $500,000.00 targeted to urban underserved areas. Community economic development programs and small providers shall be given a preference to receive loans under this subdivision. The terms and conditions for the seed capital loans shall be established by the authority. As used in this act, "underserved areas" means geographical areas of this state identified by the authority as having the greatest need for broadband development. In identifying underserved areas, the authority shall consider the area's economic conditions, including, but not limited to, family income, affordability of access, lack of options available, low percentage of residents subscribing, and any other criteria considered important by the authority in determining whether an area is underserved.

5. As part of an application for financing under this act, the broadband developer and broadband operator shall file with the authority a participation plan for small and minority owned businesses and a communitywide outreach plan to educate the public of the availability of broadband services. The authority shall not approve an application unless a plan is submitted under this subdivision.

6. The authority is authorized and directed:

(a) to study the desirability and means of attracting industry to the state of New York.

(b) to periodically review the accessibility and rates to consumers and businesses on the basis of accurate cost data obtained by such accounting methods and systems as shall be approved by the members and in furtherance of the authority's policy.

(c) to fund, through the use of bonds issued pursuant to section nine of this act, research and development projects relating to broadband that are sponsored by the state university of New York.

S 6. Code of ethics. The authority shall be deemed a state agency and subject to section 74 of the public officers law.

S 7. Equal employment opportunity. The authority shall ensure that all employees or applicants for employment are afforded equal employment opportunity without discrimination.

S 8. 1. The authority may issue notes and bonds as provided under this act to do all the following:

(a) pay the development costs associated with acquiring, leasing, constructing, maintaining, and operating the broadband infrastructure.

(b) make loans to persons for development costs.

(c) make loans to persons to make purchases related to the broadband infrastructure.

(d) make loans to persons to refinance existing debt of the authority or other persons incurred in connection with the acquisition or development of technology that constitutes a part of or is related to the broadband infrastructure.

(e) pay the interest on bonds and notes of the authority.

(f) establish reserves to secure the bonds and notes of the authority.

(g) make other expenditures necessary to carry out the authority's duties under this act, including the payment of the authority's operating expenses.

2. The authority may issue renewal notes, issue bonds to pay notes, and refund bonds by the issuance of new bonds, whether or not the bonds to be refunded have matured. The refunding bonds shall be sold and the proceeds applied to the purchase, redemption, or payment of the bonds to be refunded. The authority may issue instruments separate from the obligations described in this section that establish a contractual right in the holder of the instrument to require mandatory tender for purchase of the obligations to which the instrument applies for a period of time and subject to provisions as the authority may determine.

3. Except as otherwise provided by the authority or this act, every note or bond issue of the authority shall be a general obligation of the authority payable out of revenues or money of the authority, subject only to agreements with the holders of particular notes or bonds pledging any particular receipts or revenues.

4. Whether or not the notes or bonds are of a form or character as to be negotiable instruments, the notes or bonds are negotiable instruments within the meaning of the uniform commercial code.

S 9. 1. The notes and bonds shall be authorized by resolution of the authority and mature at the time provided in the resolution. The notes and bonds shall be in a form, bear interest at a rate or rates, be in the denominations, carry registration privileges, be payable, and be subject to the terms of redemption as provided in the resolution.

2. The notes and bonds of the authority may be sold by the authority at public or private sales at prices as the authority determines.

S 10. A resolution relating to authorizing notes or bonds may contain any of the following provisions, which shall be a part of the contract with the holder of the notes or bonds:

1. Pledging all or any part of the revenues of the authority, and all or any part of the money received in payment of loans and interest on loans, and other money received or to be received to secure the payment of the notes or bonds.

2. Pledging all or any part of the assets of the authority, including mortgages and obligations obtained by the authority in connection with its programs, to secure the payment of the notes or bonds.

3. Pledging any loan, grant, or contribution from a government entity.

4. The use and disposition of the gross income from contracts and leases of the authority.

5. The setting aside of reserves or sinking funds and the regulation and disposition of reserved or sinking funds.

6. Limitations on the purpose to which the proceeds of sale of notes or bonds may be applied and pledging proceeds to secure the payment of the notes or bonds.

7. Limitations on the issuance of additional notes or bonds, the terms upon which additional notes or bonds may be issued and secured, and the refunding of outstanding or other notes or bonds.

8. The procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of notes or bonds the holders of which shall consent to the amendment or abrogation, and the manner in which the consent is to be given.

9. Vesting in a trustee or trustees property, rights, powers, and duties in trust as the authority may determine, which may include any of the rights, powers, and duties of the trustee appointed by the bondholders under this act and limiting or abrogating the rights of the bond-

holders to appoint a trustee under this section or limiting the rights, powers, and duties of the trustee.

10. Establishing a contractual right to require mandatory tender for purchase of the notes or bonds in an instrument separate from the notes or bonds. The instrument may be issued or sold by the authority to investors.

11. Except as otherwise prohibited by this act, any other provision that may affect the security or protection of the notes or bonds.

12. Delegating to an officer or other employee of the authority, or an agent designated by the authority, for a period of time as the authority determines, the power to cause the issue, sale, and delivery of the notes or bonds within limits on those notes or bonds established by the authority as to any of the following:

(a) the form.

(b) the maximum interest rate or rates.

(c) the maturity date or dates.

(d) the purchase price.

(e) the denominations.

(f) the redemption premiums.

(g) the nature of the security.

(h) the selection of the applicable interest rate index.

(i) other terms and conditions with respect to issuance of the notes or bonds as the authority shall prescribe.

S 11. 1. Any pledge made by the authority is valid and binding from the date that the pledge is made.

2. The money or property pledged and received by the authority shall immediately be subject to the lien of the pledge without any physical delivery or further act and the lien of the pledge is valid and binding against all parties having claims in tort, contract, or otherwise against the authority, irrespective of whether the parties have notice of the lien.

3. The resolution or any other instrument by which a pledge is created need not be recorded.

S 12. The members of the board or any person executing the notes or bonds under this act are not liable personally on the notes or bonds or subject to any personal liability or accountability by reason of the issuance of the notes or bonds.

S 13. 1. The authority may issue notes or bonds that are expressly stated not to be general obligations of the authority but that constitute limited obligations of the authority payable solely from and secured solely by the revenues, money, and property as the authority may specify.

2. The notes or bonds designated as limited obligations under this section shall not be payable from or secured by the reserve capital account, and any reserve fund established for the limited obligation notes or bonds shall not constitute a capital reserve fund under this act.

S 14. Monies of the authority. 1. All monies of the authority from whatever source derived shall be paid to the state comptroller as agent of the authority, who shall not commingle such monies with any other monies. Such monies shall be deposited in a separate bank account or accounts. The monies in such accounts shall be paid out on check of the comptroller on requisition of the chairperson of the authority or of such other person as the authority may authorize to make such requisition. All deposits of such monies shall be secured by obligations of the United States or of the state of New York of a market value equal at all

times to the amount on deposit and all banks and trust companies are authorized to give such security for such deposits. The comptroller and his or her legally authorized representatives are hereby authorized and empowered from time to time to examine the accounts and books of the authority, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other matters relating to its financial standing.

2. Notwithstanding the provisions of this section, the authority shall have power, subject to the approval of the comptroller, to contract with the holders of any of its bonds as to the custody, collection, securing, investment and payment of any monies of the authority, or any monies held in trust or otherwise for the payment of bonds or in any way to secure notes or bonds, and to carry out any such contract. Monies held in trust or otherwise for the payment of bonds or in any way to secure bonds and deposits of such monies may be secured in the same manner as monies of the authority, and all banks and trust companies are authorized to give such security for such deposits.

3. Monies of the authority not required for immediate use may, in the discretion of the authority, be invested by the comptroller in obligations of the United States government or of the state of New York.

4. Subject to agreements with bondholders and the approval of the comptroller, the authority shall prescribe a system of accounts.

S 15. Agreement of the state. The state of New York does hereby pledge to and agree with the holders of any obligations issued under this act, and with those parties who may enter into contracts with the authority, that the state will not limit or alter the rights hereby vested in the authority until such obligations together with the interest thereon are fully met and discharged and/or such contracts are fully performed on the part of the authority, provided that nothing contained in this act shall preclude such limitation or alteration if and when adequate provision shall be made by law for the protection of the holders of such obligations of the authority or those entering into such contracts with the authority. The authority as agent for the state is authorized to include this pledge and undertaking for the state in such obligations or contracts.

S 16. The state is not liable on notes or bonds of the authority and the notes and bonds of the authority shall not constitute a debt of this state. The bonds shall contain on their face a statement of the limitation contained in this section.

S 17. Contracts negotiated by authority. 1. Contracts negotiated by the authority shall be in conformity with the applicable provisions of section 135 of the state finance law.

2. After preliminary agreement upon the terms of any such contracts shall have been reached by the authority and its co-party or co-parties, the authority shall promptly transmit a copy of such proposed contract to the governor, the comptroller, the speaker of the assembly, the minority leader of the assembly, the chairperson of the assembly ways and means committee, the temporary president of the senate and the minority leader of the senate and the chairperson of the senate finance committee and shall hold a public hearing or hearings upon the terms thereof. At least thirty days notice of such hearing shall be given by publication once in each week during such period in each of six newspapers within the state to be selected by the authority. Copies of proposed contracts shall be available for public inspection during such period of thirty days at the office or offices of the authority and at such other places throughout the state as it may designate.

3. Following such public hearing, the authority shall reconsider the terms of the proposed contract or contracts and shall negotiate such changes and modifications in the contract or contracts as it deems necessary or advisable.

4. When such contract or contracts are finally agreed upon in terms satisfactory to the authority and its co-party or co-parties, and which the authority believes to be in the public interest, the authority shall thereupon report the proposed contract or contracts, together with its recommendations and the record of the public hearings thereon, to the comptroller, the speaker of the assembly, the chairperson of the assembly ways and means committee, the temporary president of the senate, the chairperson of the senate finance committee and the governor. The governor shall, within 60 days thereafter, indicate his or her approval or disapproval thereof and give his or her reasons therefor.

5. If the governor and comptroller shall approve such contract, then the same shall be executed by the chairperson and secretary of the authority and it shall thereupon come into full force and effect and be binding upon the authority and all other parties thereto in accordance with its terms.

S 18. The notes and bonds of the authority are securities in which public officers and bodies of this state and municipalities and municipal subdivisions, insurance companies and associations and other persons carrying on an insurance business, banks, trust companies, savings banks and savings associations, savings and loan associations, investment companies, administrators, guardians, executors, trustees and other fiduciaries, and any other person who is now or may be authorized to invest in bonds or other obligations of this state, may properly and legally invest funds, including capital, in their control or belonging to them.

S 19. Exemption from taxation. It is hereby found and declared that the projects authorized by this act are for the aid and improvement of commerce and that such aid and improvement of commerce and the development of equal access to bandwidth is primarily for the benefit of the people of the state of New York, for the improvement of their health and welfare and material prosperity, and is a public purpose, and the authority shall be regarded as performing a governmental function in undertaking such projects and in carrying out the provisions of this act, and shall be required to pay no taxes or assessments upon its activities in the operations and maintenance thereof, provided that nothing herein shall prevent the authority from entering into agreements to make payments in lieu of taxes with respect to property acquired for any project where such payments are based solely on the value of real property without regard to any improvement thereof by the authority.

S 20. Actions against authority. If any action founded upon a tort, a notice of claim shall be required as a condition precedent to the commencement of an action or special proceeding against the authority or any officer, appointee, agent or employee thereof, and the provisions of section 50-e of the general municipal law shall govern the giving of such notice. An action against the authority for wrongful death shall be commenced in accordance with the notice of claim and time limitation provisions provided by law.

S 21. Public service law not applicable to authority. The authority shall not be subject to the provisions of the public service law or to regulation by or the jurisdiction of the department of public service or the public service commission by reason of any contract, agreement or

arrangement entered into by the authority with any private telecommunications company.

S 22. Annual reports. The authority shall report annually to the governor, the comptroller, and the legislature upon its operations and transactions. Such annual report shall include but not be limited to:

1. An assessment of current availability and reliability of bandwidth to all businesses and residents of New York;

2. The costs associated with acquiring and using lowband, broadband, and wireless bandwidth;

3. Progress on service to previously defined underserved areas;

4. A schedule of its bonds and notes outstanding at the end of the fiscal year and a statement of the amounts redeemed and incurred in that fiscal year; and

5. Basic financial and operating information specifically detailed for the reporting year and including but not limited to income and expense statements, balance sheets, and changes in financial position, all in accordance with generally accepted accounting principles, debt structure and a summary of funds on a cash basis.

S 23. Separability. If any clause, sentence, paragraph, section, or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof involved in the controversy in which such judgment shall have been rendered.

S 24. The state finance law is amended by adding two new sections 95-h and 95-i to read as follows:

S 95-H. BROADBAND DEVELOPMENT AUTHORITY CAPITAL RESERVE FUND. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE COMPTROLLER AND THE CHAIRPERSON OF THE NEW YORK STATE BROADBAND DEVELOPMENT AUTHORITY A REVENUE FUND KNOWN AS THE "BROADBAND DEVELOPMENT AUTHORITY CAPITAL RESERVE FUND".

2. THE FUND SHALL CONSIST OF THAT AMOUNT OF MONEY NECESSARY TO FULFILL THE CAPITAL RESERVE FUND REQUIREMENT ESTABLISHED BY THE NEW YORK STATE BROADBAND AUTHORITY ACT.

3. THE MONEYS OF THE FUND SHALL BE USED FOR THE PAYMENT OF PRINCIPAL AND INTEREST OF NOTES OR BONDS, FOR THE PURCHASE OR REDEMPTION OF THE NOTES OR BONDS, OR FOR THE PAYMENT OF A REDEMPTION OF A PREMIUM REQUIRED TO BE PAID WHEN THE NOTES OR BONDS ARE REDEEMED BEFORE MATURITY. THE MONEYS OF THE FUND SHALL NOT BE USED FOR AN OPTIONAL PURCHASE OR OPTIONAL REDEMPTION OF NOTES OR BONDS IF THE USE WOULD REDUCE THE TOTAL OF THE MONEY IN THE CAPITAL RESERVE FUND TO LESS THAN THE CAPITAL RESERVE FUND REQUIREMENT ESTABLISHED FOR THE FUND.

4. INCOME EARNED BY THE FUND MAY BE TRANSFERRED TO THE BROADBAND DEVELOPMENT AUTHORITY RESERVE CAPITAL ACCOUNT ESTABLISHED IN SECTION NINETY-FIVE-I OF THIS ARTICLE.

5. IF, AT ANY TIME, THE AMOUNT OF THE CAPITAL RESERVE FUND FALLS BELOW THE CAPITAL RESERVE FUND REQUIREMENT, THE CHAIRPERSON OF THE NEW YORK STATE BROADBAND DEVELOPMENT AUTHORITY SHALL TRANSFER MONEY FROM THE BROADBAND DEVELOPMENT AUTHORITY RESERVE CAPITAL ACCOUNT THE AMOUNT NECESSARY TO MEET THE CAPITAL RESERVE FUND REQUIREMENT. IF, AT ANY TIME, THE BROADBAND DEVELOPMENT AUTHORITY RESERVE CAPITAL ACCOUNT HAS BEEN EXHAUSTED AND THE BROADBAND DEVELOPMENT AUTHORITY CAPITAL RESERVE FUND FALLS BELOW THE CAPITAL RESERVE FUND REQUIREMENT, THEN THE CHAIRPERSON OF THE BROADBAND DEVELOPMENT AUTHORITY SHALL, BY THE NEXT DECEMBER FIRST, CERTIFY TO THE GOVERNOR THE AMOUNT NECESSARY TO RESTORE THE FUND TO ITS REQUIRED AMOUNT.

S 95-I. BROADBAND DEVELOPMENT AUTHORITY RESERVE CAPITAL ACCOUNT. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE COMPTROLLER AND THE CHAIRPERSON OF THE NEW YORK STATE BROADBAND DEVELOPMENT AUTHORITY A MISCELLANEOUS REVENUE FUND KNOWN AS THE "BROADBAND DEVELOPMENT AUTHORITY RESERVE CAPITAL ACCOUNT".

2. THE BROADBAND DEVELOPMENT AUTHORITY RESERVE CAPITAL ACCOUNT SHALL CONSIST OF ALL MONEYS RECEIVED BY OR ON BEHALF OF THE NEW YORK STATE BROADBAND DEVELOPMENT AUTHORITY THAT ARE NOT OTHERWISE NEEDED FOR THE BROADBAND DEVELOPMENT CAPITAL RESERVE FUND ESTABLISHED IN SECTION NINETY-FIVE-H OF THIS ARTICLE. SUCH MONEYS SHALL INCLUDE, BUT NOT BE LIMITED TO, ANY PROCEEDS RECEIVED AS A RESULT OF THE SALE OF NOTES OR BONDS, ANY GIFTS OR DONATIONS MADE TO THE AUTHORITY, SURETY BONDS, INTEREST FROM THE BROADBAND DEVELOPMENT CAPITAL RESERVE FUND, OR ANY OTHER MONEYS RECEIVED BY THE AUTHORITY.

3. THE MONEYS OF THIS ACCOUNT SHALL BE USED TO FURTHER THE PURPOSES OF THE NEW YORK STATE BROADBAND DEVELOPMENT AUTHORITY AS DESCRIBED IN THE NEW YORK STATE BROADBAND DEVELOPMENT AUTHORITY ACT.

S 25. This act shall take effect January 1, 2010 and shall be deemed repealed 10 years after such effective date.