STATE OF NEW YORK

9057

IN ASSEMBLY

January 18, 2018

Introduced by M. of A. CAHILL -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public service law and the state finance law, in relation to state contracts being only with internet service providers compliant with net neutrality and establishes a revolving fund for the establishment of municipal internet service providers; and making an appropriation therefor

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "NYS Net Neutrality Protection Act".

§ 2. Subdivision 1 of section 5 of the public service law is amended by adding a new paragraph i to read as follows:

i. To every broadband internet line which lies wholly within the state and that part within the state of New York of every broadband internet line which lies partly within and partly without the state and to the persons or corporations owning, leasing or operating any such broadband internet line.

§ 3. Section 5 of the public service law is amended by adding a new subdivision 7 to read as follows:

7. The commission shall require any person engaged in the provision of broadband internet access service in New York state to report to the commission, and publicly disclose annually, accurate information regarding the network management practices, performance, and commercial terms of its broadband internet access services sufficient for consumers to make informed choices regarding use of such services and for content, application, service, and device providers to develop, market, and maintain internet offerings.

§ 4. Subdivision 1 of section 165 of the state finance law is amended by adding three new paragraphs f, g and h to read as follows:

f. A "net neutral source of internet services" shall mean an internet service provider who adheres to the principles of net neutrality.

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

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g. A "non-net neutral source of internet services" shall mean an internet service provider who violates any of the principles of net neutrality.

h. "The principles of net neutrality" shall mean the rules and regulations under the open internet report and order on remand, declaratory ruling, and order by the federal communications commission released March twelfth, two thousand fifteen, GN Docket No. 14-28.

§ 5. Section 165 of the state finance law is amended by adding a new subdivision 9 to read as follows:

9. Prohibition on purchase of internet services from a non-net neutral source of internet services.

a. (i) With respect to contracts described in subparagraphs (ii) and (iii) of this paragraph, and in accordance with such subparagraphs, the state and any governmental agency or political subdivision or public benefit corporation or municipality of the state shall not contract for the supply of internet services with any contractor who does not agree to stipulate to the following, if there is another contractor who will contract to supply internet services of comparable quality at a comparable price or cost, the contractor and any individual or legal entity in which the contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the contractor shall make lawful steps in good faith to conduct any business operations as a net neutral source of internet services.

(ii) In the case of contracts let by a competitive process, whenever the responsive and responsible offerer having the lowest price or best value offer has not agreed to stipulate to the conditions set forth in this subdivision and another responsive and responsible offerer who has agreed to stipulate to such conditions has submitted an offer shall determine that the contract be awarded to the lowest price or best value offer for internet services from a net neutral source of internet services.

(iii) In the case of contracts let by other than a competitive process internet services involving an expenditure of an amount greater than the discretionary buying threshold as specified in section one hundred sixty-three of this article, the contracting entity shall not award to a proposed contractor who has not agreed to stipulate to the conditions set forth in this subdivision unless the entity seeking to use the internet services determines that the internet services are necessary for the entity to perform its functions and there is no other responsible contractor who will supply internet services of comparable quality at a comparable price. Such determinations shall be made in writing and shall be public documents.

b. Upon receiving information that a contractor who has made the stipulation required by this subdivision is in violation thereof, the contracting entity shall review such information and offer the contractor an opportunity to respond. If the contracting entity finds that a violation has occurred, it shall take such action as may be appropriate and provided for by law, rule or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the contractor in default.

c. As used in this subdivision, the term "contract" shall not include contracts with governmental and non-profit organizations, contracts awarded pursuant to emergency procurement procedures or contracts, resolutions, indentures, declarations of trust or other instruments authorizing or relating to the authorization, issuance, award, sale or

purchase of bonds, certificates of indebtedness, notes or other fiscal obligations, provided that the policies of this subdivision shall be considered when selecting a contractor to provide financial or legal advice, and when selecting managing underwriters in connection with such activities.

d. The provisions of this subdivision shall not apply to contracts for which the state or other contracting entity receives funds administered by the United States, except to the extent congress has directed to not withhold funds from states and localities that choose to implement selective purchasing policies based on an agreement to comply with the principles of net neutrality, or to the extent that such funds are not otherwise withheld by congress.

§ 6. The state finance law is amended by adding a new section 99-bb to read as follows:

§ 99-bb. Municipal internet service provider revolving loan fund. 1. There is hereby established in the joint custody of the comptroller and the public service commission a fund to be known as the "municipal internet service provider revolving loan fund". Such fund shall consist of moneys made available pursuant to appropriation and any other sources in order to provide support for municipalities attempting to create their own internet service provider.

2. The account shall consist of all moneys appropriated for its purpose, all moneys transferred to such account pursuant to law, and all moneys required by this section or any other law to be paid into or credited to this account, including all moneys received by the account or donated to it, payments of principal and interest on loans made from the account, and any interest earnings which may accrue from the investment or reinvestment of moneys from the account.

3. Moneys of the account, when allocated, shall be available to the public service commission to make loans as provided in this section. Up to five percent of the moneys of the account or two hundred fifty thousand dollars, whichever is less, may be used to pay the expenses, including personal service and maintenance and operation, in connection with the administration of such loans.

4. (a) The public service commission may make, upon application duly made, up to the amounts available by appropriation, loans for any and all costs associated with the creation of a municipally owned broadband internet service provider.

(b) The public service commission shall have the power to make such rules and regulations as may be necessary and proper to effectuate the purposes of this section.

5. (a) Application for loans may be made by a town, village, city or county provided that the application is otherwise consistent with its respective powers. Applications may also be submitted jointly by multiple applicants provided that the application is otherwise consistent with each applicant's respective powers.

(b) Every application shall be in a form acceptable to the public service commission. Every application shall accurately reflect the conditions which give rise to the proposed expenditure and accurately reflect the ability of the applicant to make such an expenditure without the proceeds of a loan under this section.

(c) (i) The public service commission shall give preference to those applications which demonstrate the greatest need, joint applications, and to those applications the proceeds of which will be applied toward attaining compliance with federal and state laws and may disapprove any application which contains no adequate demonstration of need or which

would result in inequitable or inefficient use of the moneys in the account.

(ii) In making determinations on loan applications, the public service commission shall assure that loan fund moneys are equitably distributed among all geographical areas of the state.

(d) The public service commission shall, to the maximum extent feasible, and consistent with the other provisions of this section, seek to provide that loans authorized by this section reflect an appropriate geographic distribution, are distributed equitably and encourage regional cooperation.

§ 7. The sum of two hundred fifty million dollars ($250,000,000), or so much thereof as may be necessary, is hereby appropriated from any moneys in the state treasury in the general fund to the credit of the state purposes account for the initial capital of the municipal internet service provider revolving loan fund in carrying out the provisions of this act. Such sum shall be payable on the audit and warrant of the state comptroller on vouchers certified or approved in the manner provided by law. No expenditure shall be made from this appropriation until a certificate of approval of availability shall have been issued by the director of the budget and filed with the state comptroller and a copy filed with the chairman of the senate finance committee and the chairman of the assembly ways and means committee. Such certificate may be amended from time to time by the director of the budget and a copy of each such amendment shall be filed with the state comptroller, the chairman of the senate finance committee and the chairman of the assembly ways and means committee.

§ 8. This act shall take effect immediately.