

# STATE OF NEW YORK

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138

2019-2020 Regular Sessions

## IN ASSEMBLY

(Prefiled)

January 9, 2019

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Introduced by M. of A. CAHILL, COLTON, QUART, JAFFEE, HYNDMAN, LAVINE, ENGLEBRIGHT, ZEBROWSKI, CRESPO, WRIGHT, D. ROSENTHAL, D'URSO, HEVESI, MOSLEY, SIMON, BRONSON, GUNTHER, MONTESANO, AUBRY, BICHOTTE, PEOPLES-STOKES, NIOU, HUNTER -- Multi-Sponsored by -- M. of A. DE LA ROSA, LENTOL, THIELE -- 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:

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

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

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

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

12 7. The commission shall require any person engaged in the provision of  
13 broadband internet access service in New York state to report to the  
14 commission, and publicly disclose annually, accurate information regard-  
15 ing the network management practices, performance, and commercial terms  
16 of its broadband internet access services sufficient for consumers to  
17 make informed choices regarding use of such services and for content,

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

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1 application, service, and device providers to develop, market, and main-  
2 tain internet offerings.

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

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

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

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

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

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

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

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

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

50 b. Upon receiving information that a contractor who has made the stip-  
51 ulation required by this subdivision is in violation thereof, the  
52 contracting entity shall review such information and offer the contrac-  
53 tor an opportunity to respond. If the contracting entity finds that a  
54 violation has occurred, it shall take such action as may be appropriate  
55 and provided for by law, rule or contract, including, but not limited

1 to, imposing sanctions, seeking compliance, recovering damages or  
2 declaring the contractor in default.

3 c. As used in this subdivision, the term "contract" shall not include  
4 contracts with governmental and non-profit organizations, contracts  
5 awarded pursuant to emergency procurement procedures or contracts,  
6 resolutions, indentures, declarations of trust or other instruments  
7 authorizing or relating to the authorization, issuance, award, sale or  
8 purchase of bonds, certificates of indebtedness, notes or other fiscal  
9 obligations, provided that the policies of this subdivision shall be  
10 considered when selecting a contractor to provide financial or legal  
11 advice, and when selecting managing underwriters in connection with such  
12 activities.

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

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

22 § 99-ff. Municipal internet service provider revolving loan fund. 1.  
23 There is hereby established in the joint custody of the comptroller and  
24 the public service commission a fund to be known as the "municipal  
25 internet service provider revolving loan fund". Such fund shall consist  
26 of moneys made available pursuant to appropriation and any other sources  
27 in order to provide support for municipalities attempting to create  
28 their own internet service provider.

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

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

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

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

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

54 (b) Every application shall be in a form acceptable to the public  
55 service commission. Every application shall accurately reflect the  
56 conditions which give rise to the proposed expenditure and accurately

1 reflect the ability of the applicant to make such an expenditure without  
2 the proceeds of a loan under this section.

3 (c) (i) The public service commission shall give preference to those  
4 applications which demonstrate the greatest need, joint applications,  
5 and to those applications the proceeds of which will be applied toward  
6 attaining compliance with federal and state laws and may disapprove any  
7 application which contains no adequate demonstration of need or which  
8 would result in inequitable or inefficient use of the moneys in the  
9 account.

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

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

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

34 § 8. This act shall take effect immediately.