STATE OF NEW YORK

9112

IN SENATE

December 4, 2020

Introduced by Sens. MAYER, PARKER, LIU, COMRIE, BIAGGI, METZGER, ADDABBO, BAILEY, BROOKS, GIANARIS, GOUNARDES, HARCKHAM, HOYLMAN, JACKSON, KAMINSKY, KAPLAN, KAVANAGH, KENNEDY, KRUEGER, MAY, PERSAUD, SALAZAR, SANDERS, SAVINO, SEPULVEDA, SKOUFIS, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the education law, the tax law, the state finance law and the public service law, in relation to ensuring all children have access to the delivery of technology through high-quality broadband internet connectivity in support of the constitutional education obligations of the state; 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 "E-Let's Expand Access to Remote Now (E-LEARN) Act".

§ 2. Legislative intent. The legislature hereby finds and declares that the COVID-19 pandemic has plagued the health, economy and education systems throughout New York and impacted the livelihood of every resident of the state with an extensive, protracted and disproportionate impact on students in every region.

The legislature further finds the unprecedented closure of school buildings for the last quarter of the 2019-20 school year coupled with increasing COVID-19 public health and safety concerns throughout the summer and into the beginning of the 2020-21 school year have continued to present logistical challenges for the delivery of education and support services especially for students who are living in poverty.

The legislature further finds Article XI of the New York state Constitution which stipulates 'The Legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of the state may be educated' must be continuously upheld even throughout the ensuing pandemic period.

The legislature further finds schools across the state had to quickly implement technological programs and devices to deliver remote learning

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

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options to students during the closed down period and many schools are required to, or are requested to, continue distance learning modality as an instructional delivery model.

The legislature further finds lack of high-quality internet access has had and continues to have a disequalizing impact on children who are poor, homeless and without the resources to support their educational needs.

The Legislature further finds it is a state imperative to ensure all children have access to the delivery of technology through high-quality broadband internet connectivity in order to meet the State's constitutional requirement and maintain a system of free common schools.

The legislature further finds that high-speed internet access, commonly referred to as broadband internet, can be achieved through utilization of a variety of technologies, including wired infrastructure via fiber optic cable, and through wireless technologies such as fixed wireless internet and satellite internet, and that taking advantage of all available and evolving technologies can enable communities currently without wired infrastructure to nonetheless improve access to high quality internet until such time as wired infrastructure is made universally available.

The legislature further finds that almost every sector of New York's economy, democracy, and society depends on widespread, high-quality internet access that supports vital functions regulated under the police power of the state.

The legislature further finds that while the internet is an interstate resource, the essential support it provides for innumerable municipal and state operations, vital business and community service, delivery of educational programs and services and daily interactions between the people of New York and their governments are of state concern.

The legislature further finds that while the operations of telecommunication service providers must be subject to state oversight, they also must be protected from undue restraint and regulation so as to assure optimum technology and maximum availability in this state as rapidly as economically and technically feasible.

The legislature further finds that telecommunication service providers, notwithstanding their unique attributes, are part of an increasingly integrated telecommunications industry, the soundness of which is essential, not only to education, but also to the state's economic growth and general welfare, and portions of whose business are wholly intrastate.

The legislature further finds that there is a need for one or more state agencies to determine state internet access policy as it relates to the education of the state's students during the COVID-19 pandemic, ensure that telecommunication service providers provide adequate, economical and efficient service to students and schools, and oversee, consonant with federal regulations and statutes, the availability of high-quality internet access during the COVID-19 pandemic in support of the constitutional education obligations of the state.

The legislature further finds that it is necessary to establish a competitively-neutral funding mechanism to provide the resources necessary to assure and maintain satisfaction of the constitutional education obligations of the state.

Therefore, be it resolved, that, the legislature hereby approves the use of the police power inherent in the state of New York to protect and promote the safety, life, public health, public convenience, general prosperity, and well-being of society, and the welfare of the state's

population and economy, as necessary to satisfy the provisions of Article XI of the New York state Constitution to provide a free public education pursuant to the E-Let's Expand Access to Remote Now (E-LEARN) act, as defined in this act.

§ 3. The education law is amended by adding a new article 9-A to read as follows:

ARTICLE 9-A
E-LEARN PROGRAM

Section 430. Definitions.
431. Application for allocation from the E-LEARN fund.
432. Allocation of E-LEARN funds.
433. Grant of permission for use of information.
434. Provision of high-quality internet access to eligible students.
435. Provision of high-quality internet access to eligible schools.
436. Payment of costs and expenses.
437. Collaboration.
438. Cooperation of third parties.
439. Requirements.

§ 430. Definitions. For the purposes of this article:

1. "Broadband internet access service" means a service provided by wire or radio in New York state that provides the capability to transmit data to, and receive data from, all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up internet access service. Broadband internet access service also encompasses any service provided in New York that provides a functional equivalent of that service or that is used to evade the provisions set forth in this article.

2. "Chancellor" means the chancellor of the New York city department of education.

3. "Department" means the education department of the state of New York.

4. "Eligible school" means a public school including a school operated by a board of cooperative educational services, non-public school, charter school, special act school, approved private school serving students with disabilities subject to article eighty-one or eighty-nine of this chapter, state supported school subject to article eighty-five of this chapter, or state operated school subject to article eighty-seven or eighty-eight of this chapter, in each case serving students between five and twenty-one years of age.

5. "Eligible student" means a student who is a resident of the state between five and twenty-one years of age who is enrolled in an eligible school or who is provided home instruction in compliance with part one of article sixty-five of this chapter and applicable regulations.

6. "High-quality internet access" means, with respect to broadband internet access service provided to an eligible student, uninterrupted broadband internet access service which is not limited to one or more particular devices and which provides actual and stable download speeds of at least 25 megabits per second (Mbps) and upload speeds of at least 3 Mbps at all times throughout the applicable school year, and, with respect to broadband internet access service provided to an eligible school, actual and stable download speeds of at least 1 Mbps per enrolled student and upload speeds of at least 1 Mbps per enrolled student at all times throughout the applicable school year.

7. "Telecommunication service provider" means a business that provides broadband internet access service in the state.

§ 431. Application for allocation from the E-LEARN fund. 1. Each public school district with respect to eligible schools under the jurisdiction of such public school district, board of cooperative educational services with respect to eligible schools under the jurisdiction of such board of cooperative educational services, non-public school, charter school, approved private school serving students with disabilities subject to article eighty-one or eighty-nine of this chapter, state supported school subject to article eighty-five of this chapter, or state operated school subject to article eighty-seven or eighty-eight of this chapter is hereby directed to submit documentation to the department of the requirements necessary to satisfy the provisions of sections four hundred thirty-four and four hundred thirty-five of this article. Each such public school district, board of cooperative educational services or school, as applicable, shall make application within forty-five days of the effective date of this article to the department setting forth such requirements, and annually thereafter before August first.

2. The chancellor is hereby directed to submit documentation to the department of the requirements necessary to satisfy the provisions of sections four hundred thirty-four and four hundred thirty-five of this article with respect to eligible schools under the jurisdiction of the New York city department of education and eligible students enrolled in such eligible schools. The chancellor shall make application to the department within ninety days of the effective date of this article setting forth such requirements of such eligible schools, and annually thereafter before August first.

3. The person in parental relation to each eligible student who is providing home instruction in compliance with part one of article sixty-five of this chapter and applicable regulations is hereby directed to submit documentation to the department of the requirements necessary to satisfy the provisions of sections four hundred thirty-four and four hundred thirty-five of this article with respect to such eligible students. Such person in parental relation shall make application to the department within forty-five days of the effective date of this article setting forth such requirements of such eligible school, and annually thereafter before August first.

§ 432. Allocation of E-LEARN funds. The commissioner shall determine criteria for allocation of moneys from the E-LEARN fund to public school districts, boards of cooperative educational services, the New York city department of education, non-public schools, charter schools, special act schools, approved private schools serving students with disabilities subject to article eighty-one or eighty-nine of this chapter, state supported school subject to article eighty-five of this chapter, state operated school subject to article eighty-seven or eighty-eight of this chapter, and persons in parental relation to eligible students who are providing home instruction in compliance with part one of article sixty-five of this chapter and applicable regulations for achieving equitable access to remote learning resources for eligible students and eligible schools pursuant to sections four hundred thirty-four and four hundred thirty-five of this article. Such criteria shall include but not be limited to the number of eligible students at each eligible school, the degree to which multiple eligible students are members of the same household and reside at the same residence, the response rate of grants of permission pursuant to section four hundred thirty-three of this

article, the degree of need of each eligible school and their respective classrooms, and, subject to section four hundred thirty-seven of this article, the different regional factors affecting the provision of high-quality internet access.

§ 433. Grant of permission for use of information. Notwithstanding section two-d of this chapter, public school districts, boards of cooperative education, the chancellor, charter schools, non-public schools, approved private schools serving students with disabilities subject to article eighty-one or eighty-nine of this chapter, state supported schools subject to article eighty-five of this chapter, or state operated schools subject to article eighty-seven or eighty-eight of this chapter, shall provide to eligible students or their families, as appropriate, a form requesting information as to whether the eligible student had high-quality internet access as of the effective date of this section and continues to have high-quality internet access, and if such student had high-quality internet access as of such date and continues to have high-quality internet access, the name of the current provider of such high-quality internet service, and in either case requesting permission for the use of names and contact information of such students or families, as appropriate, for purposes of entering into agreements to provide such eligible students with high-quality internet access in accordance with this article or for purposes of the reduction in costs pursuant to subdivision three of section two hundred twenty-four-c of the public service law. Such form of request shall be in a form, and distributed and collected, in such manner as the applicable public school district, board of cooperative educational services, the chancellor, or eligible school, as applicable, may deem appropriate; provided, however, that use of information provided shall be limited to use of only such personally identifiable information as shall be necessary to satisfy the requirements of this article and subdivision three of section two hundred twenty-four-c of the public service law. Such form of request shall be provided to eligible students, or their families, as appropriate, no later than fifteen days after the effective date of this article, and shall be translated in the predominant languages other than English of eligible students and their families served by such eligible schools.

§ 434. Provision of high-quality internet access to eligible students. 1. (a) Upon approval of the allocations of the E-LEARN fund pursuant to section four hundred thirty-two of this article each public school district with respect to eligible schools under the jurisdiction of such public school district, board of cooperative educational services with respect to eligible schools under the jurisdiction of such board of cooperative educational services, non-public school, charter school, approved private school serving students with disabilities subject to article eighty-one or eighty-nine of this chapter, state supported school subject to article eighty-five of this chapter, and state operated school subject to article eighty-seven or eighty-eight of this chapter shall be authorized to enter into agreements to provide each eligible student enrolled at an eligible school who did not have high-quality internet access as of the effective date of this article and continues to lack high-quality internet access, and for whom a grant of permission has been returned pursuant to this section, with high-quality internet access on a continual basis at the residence of such eligible student, whether such residence is temporary or permanent, in such manner as shall be deemed appropriate by such public school district,

board of cooperative educational services, or eligible school, as appropriate; and

(b) The chancellor shall be authorized to enter into agreements to provide each eligible student enrolled at an eligible school under the jurisdiction of the New York city department of education who did not have high-quality internet access as of the effectiveness of this article and continues to lack high-quality internet access, and for whom a grant of permission has been returned pursuant to this section, with high-quality internet access on a continual basis at the residence of such eligible student, whether such residence is temporary or permanent, in such manner as shall be deemed appropriate by the chancellor.

2. In satisfying the requirements of subdivision one of this section, public school districts, boards of cooperative educational services, the chancellor and the eligible schools set forth in subdivision one of this section are authorized and directed to coordinate the provision of high-quality internet access in collaboration with community-based organizations, the office for people with developmental disabilities, the office of children and family services, the state university of New York, the department of corrections and community supervision, the office of temporary and disability assistance, the department of health, and such other persons or entities as may be appropriate, including parties with an interest in the residence of an eligible student, such as homeless shelters, landlords, and manufactured home parks.

§ 435. Provision of high-quality internet access to eligible schools. Upon approval of the allocation of the E-LEARN fund pursuant to section four hundred thirty-two of this article:

1. Each public school district shall contract for high-quality internet access on a continual basis at each school district building and for all eligible schools under such public school district's jurisdiction sufficient to support all instructional and administrative operations of such public school district and such eligible schools to the extent that such buildings and eligible schools did not have high-quality internet access as of the effective date of this article and continue to lack high-quality internet access;

2. Each board of cooperative educational services shall contract for high-quality internet access on a continual basis at each such board of cooperative educational services building and for all eligible schools under such board of cooperative educational services' jurisdiction sufficient to support all instructional and administrative operations of such board of cooperative educational services and such eligible schools to the extent that such buildings and eligible schools did not have high-quality internet access as of the effective date of this article and continue to lack high-quality internet access;

3. The chancellor shall contract for high-quality internet access on a continual basis at each New York city department of education building and for all eligible schools under the jurisdiction of the New York city department of education sufficient to support all instructional and administrative operations of the New York city department of education and such eligible schools to the extent that such buildings and eligible schools did not have high-quality internet access as of the effective date of this article and continue to lack high-quality internet access; and

4. Each non-public school, charter school, approved private school serving students with disabilities subject to article eighty-one or eighty-nine of this chapter, state supported school subject to article eighty-five of this chapter, or state operated school subject to article

eighty-seven or eighty-eight of this chapter which is an eligible school shall contract for high-quality internet access on a continual basis at such eligible school sufficient to support all instructional and administrative operations of such eligible school to the extent that such buildings and eligible schools did not have high-quality internet access as of the effective date of this article and continue to lack high-quality internet access.

§ 436. Payment of costs and expenses. 1. Public school districts, boards of cooperative educational services, the New York city department of education, non-public schools, charter schools, approved private schools serving students with disabilities subject to article eighty-one or eighty-nine of this chapter, state supported schools subject to article eighty-five of this chapter, state operated schools subject to article eighty-seven or eighty-eight of this chapter, and persons in parental relation to eligible students who are providing home instruction in compliance with part one of article sixty-five of this chapter and applicable regulations shall submit to the department:

(a) for reimbursement, such receipts and other appropriate evidence of costs and expenses incurred in satisfying the requirements of sections four hundred thirty-four and four hundred thirty-five of this article; and

(b) for direct payment out of amounts in the E-LEARN fund established in section ninety-five-j of the state finance law, evidence of unpaid costs and related payment instructions, for goods or services obtained in satisfying the requirements of sections four hundred thirty-four and four hundred thirty-five of this article.

2. The department shall submit such documentation necessary for the comptroller to make such reimbursements and payments out of the E-LEARN fund.

§ 437. Collaboration. The department, public school districts, boards of cooperative educational services, the chancellor, and eligible schools, as appropriate, in fulfilling the obligations set forth in sections four hundred thirty-four and four hundred thirty-five of this article, shall make reasonable efforts to collaborate with community-based organizations with expertise in internet access to facilitate the provision of high-quality internet access to eligible students and eligible schools, including eligible students residing in non-traditional places of residence.

§ 438. Cooperation of third parties. Every telecommunication service provider, landlord, building manager, or any other individual having responsibility for the care and control of a premises which is a residence or domicile of any eligible student, whether such residence or domicile is temporary or permanent, shall cooperate with the efforts of public school districts, boards of cooperative education, the chancellor, eligible schools, and eligible students and their families to satisfy the requirements of section four hundred thirty-four of this article by, where appropriate, being available at reasonable times to communicate regarding provision of high-quality internet access, providing reasonable access to buildings or other structures, facilitating installation of technologies necessary to provide high-quality internet access and taking such other cooperative measures as may reasonably be requested.

§ 439. Requirements. The requirements of this article shall not be qualified by the difficulty or cost of providing high-quality internet access to any particular eligible student or eligible school, nor shall any eligible student or eligible school be prioritized over any other

eligible student or eligible school by reason of any such difficulty or cost.

§ 4. The tax law is amended by adding a new section 186-h to read as follows:

§ 186-h. Duties of the department under the E-LEARN program. 1. Definitions. For the purposes of this section:

(a) "Telecommunication service provider" means a business that provides broadband internet access service in the state.

(b) "E-LEARN fund" shall mean the fund established in section ninety-five-j of the state finance law.

(c) "Assessment rate" means the percentage rate which when multiplied by each telecommunication service provider's total gross intrastate telecommunication revenue for the prior calendar year, or if such revenue is unavailable, the most recent calendar year for which such revenue is available, which determines that provider's annual contribution to the E-LEARN fund, determined by the department in consultation with the state education department to be sufficient in amount to provide for acquisition of high-quality internet access pursuant to article nine-A of the education law, taking into account for any school year subsequent to the two thousand twenty--two thousand twenty-one school year any excess amounts remaining in the E-LEARN fund from the prior year pursuant to subdivision five of section ninety-five-j of the state finance law.

2. Contribution. All telecommunication service providers operating in the state shall contribute to the preservation and advancement of the E-LEARN fund in the manner set forth in this section. Any such contribution shall not be passed through in whole or in part as a fee, charge, increased service cost, or by any other means by a telecommunication service provider to any person or customer that contracts with such telecommunication service provider for service.

3. Annual charge. (a) The department shall assess an annual charge on each telecommunication service provider in an amount equal to the assessment rate multiplied by the telecommunication service provider's total gross intrastate telecommunication revenue for the prior calendar year, or if such revenue is unavailable, the most recent calendar year for which such revenue is available. The department shall collect and deposit such amounts into a segregated account which shall subsequently be transferred to E-LEARN fund established in section ninety-five-j of the state finance law. All such amounts shall be kept separate and shall not be commingled with any other moneys collected by the department.

(b) Such annual charge shall be assessed on and collected from all telecommunication service providers operating in the state as of April first, July first, October first, and January first of each year, provided that the initial annual charge for fiscal year two thousand twenty shall be assessed and collected as of December thirty-first, two thousand twenty.

(c) Amounts collected from telecommunication service providers shall be transferred by the department of taxation and finance to the state comptroller to be deposited in the E-LEARN fund within thirty days after each collection deadline.

(d) Failure of a telecommunication service provider to make timely payment under this section will result in the levy of a late payment charge of one and one-half percent per month pro rata per diem on the delinquent contribution.

(e) If a telecommunication service provider's contribution to the E-LEARN fund in a given fiscal year is less than one hundred fifty

dollars such telecommunication service provider will not be required to pay a contribution for such year.

4. Requirements. The requirements of this section, including with respect to determinations of the assessment rate, shall not be qualified by the difficulty or cost of providing high-quality internet access to any particular eligible student or eligible school, as such terms are defined in section four hundred thirty of the education law, nor shall any eligible student or eligible school be prioritized over any other eligible student or eligible school by reason of any such difficulty or cost.

§ 5. The state finance law is amended by adding a new section 95-j to read as follows:

§ 95-j. E-LEARN fund. 1. There is hereby established in the joint custody of the comptroller and the commissioner of taxation and finance the E-LEARN fund to ensure the provision of high-quality internet access to eligible schools and eligible students in the state through the program set forth in article nine-A of the education law.

2. The E-LEARN fund shall consist of all moneys required to be deposited in the E-LEARN fund pursuant to the provisions of section one hundred eighty-six-h of the tax law.

3. The moneys in the E-LEARN fund shall be kept separate and shall not be commingled with any other moneys in the custody of the state comptroller.

4. The moneys in the E-LEARN fund shall be disbursed, upon proper application made to the state commissioner of education by public school districts, boards of cooperative educational services, the New York city department of education, non-public schools, charter schools, special act schools, approved private schools serving students with disabilities subject to article eighty-one or eighty-nine of the education law, state supported schools subject to article eighty-five of the education law, state operated schools subject to article eighty-seven or eighty-eight of the education law, and persons in parental relation to eligible students who are providing home instruction in compliance with part one of article sixty-five of the education law and section 100.10 of the NYCRR, as applicable, for the purposes of providing cost-free high-quality internet access to eligible students and eligible schools in accordance with article nine-A of the education law and for costs of the department of education, the department of taxation and finance and the comptroller's office to administer the E-LEARN fund and implement the E-LEARN program.

5. To the extent amounts received from telecommunication service providers in any given fiscal year exceed an amount equal to the aggregate disbursements from the E-LEARN fund required to be made pursuant to article nine-A of the education law plus the cost of administering the E-LEARN fund and implementing the E-LEARN program, the excess amounts shall remain in the E-LEARN fund for use in the subsequent fiscal year.

6. The requirements of this section shall not be qualified by the difficulty or cost of providing high-quality internet access to any particular eligible student or eligible school, nor shall any eligible student or eligible school be prioritized over any other eligible student or eligible school by reason of any such difficulty or cost.

§ 6. The article heading of article 11 of the public service law, as added by chapter 83 of the laws of 1995, is amended to read as follows:

PROVISIONS RELATING TO CABLE TELEVISION COMPANIES
AND TELECOMMUNICATION SERVICE PROVIDERS

§ 7. The public service law is amended by adding a new section 224-c to read as follows:

§ 224-c. Reimbursement by telecommunication service providers of eligible students and eligible schools with current high-quality internet access. 1. For the purposes of this section: (a) "Broadband internet access service" means a service provided by wire or radio in New York state that provides the capability to transmit data to, and receive data from, all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up internet access service. Broadband internet access service also encompasses any service provided in New York state that provides a functional equivalent of that service or that is used to evade the provisions set forth in this section.

(b) "Eligible school" means a public school, non-public school, charter school, special act school, approved private school serving students with disabilities subject to article eighty-one or eighty-nine of the education law, state supported school subject to article eighty-five of the education law, or state operated school subject to article eighty-seven or eighty-eight of the education law, in each case serving students between five and twenty-one years of age.

(c) "Eligible student" means a student who is a resident of the state between five and twenty-one years of age who is enrolled in an eligible school or who is provided home instruction in compliance with part one of article sixty-five of the education law and applicable regulations.

(d) "High-quality internet access" means, with respect to broadband internet access service provided to an eligible student, uninterrupted broadband internet access service which is not limited to one or more particular devices and which provides actual and stable download speeds of at least 25 megabits per second (Mbps) and upload speeds of at least 3 Mbps at all times, and, with respect to broadband internet access service provided to an eligible school, actual and stable download speeds of at least 1 Mbps per enrolled student and upload speeds of at least 1 Mbps per enrolled student at all times.

(e) "State education department" means the education department of the state of New York.

(f) "Telecommunication service provider" means a business that provides broadband internet access service in this state.

2. In fulfilling the requirements of the E-LEARN fund application process pursuant to article nine-A of the education law, the state education department shall:

(a) provide information obtained pursuant to section four hundred thirty-three of the education law regarding those eligible students already receiving high-quality internet access as of the effective date of this section to the department of public service for purposes of subdivision four of this section; and

(b) coordinate with public school districts, boards of cooperative educational services, the New York city department of education, nonpublic schools, charter schools, special act schools, approved private schools serving students with disabilities subject to article eighty-one or eighty-nine of the education law, state supported schools subject to article eighty-five of the education law, and state operated schools subject to article eighty-seven or eighty-eight of the education law as applicable to identify those eligible schools and school buildings already receiving high-quality internet access as of the effective date of this section, and provide such information to the department of public service for purposes of subdivision five of this section.

3. The department shall provide information regarding eligible students and eligible schools obtained from the state education department pursuant to subdivision two of this section to the appropriate telecommunication service providers providing high-quality internet access to the applicable eligible students and eligible schools for purposes fulfilling the requirements of subdivisions four and five of this section.

4. With respect to each eligible student who was receiving high-quality internet access as of the effective date of this section and for whom a grant of permission has been returned pursuant to subdivision one of section four hundred thirty-three of the education law, the telecommunication service provider under contract to provide such high-quality internet access shall, in good faith, continue to provide such same service under such same contract, subject to those terms of such same contract which do not abrogate the provisions of this section. The costs for such high-quality internet access shall be reduced by the applicable telecommunication service provider (but not below zero) by an amount equal to the average expense per eligible student of providing eligible students with high-quality internet access pursuant to section four hundred thirty-four of the education law.

5. With respect to each eligible school which was receiving high-quality internet access as of the effective date of this section, the telecommunication service provider under contract to provide such high-quality internet access shall continue to provide such same service under such same contract, subject to those terms of such same contract which do not abrogate the provisions of this section. The costs for such high-quality internet access shall be reduced by the applicable telecommunication service provider (but not below zero) by an amount equal to the average expense per eligible school of providing eligible schools with high-quality internet access pursuant to section four hundred thirty-five of the education law.

6. No telecommunication service provider may pass through in whole or in part as a fee, charge, increased service cost, or by any other means to any person or customer that contracts with such telecommunication service provider any cost incurred by such telecommunication service provider in fulfilling the requirements of subdivision four or five of this section.

7. No telecommunication service provider may discriminate or otherwise confer advantage or disadvantage in respect of its obligations under this section on the basis of whether an eligible student or eligible school has failed to timely make any payments under a contract with such telecommunication service provider.

8. The requirements of this section shall not be qualified by the difficulty or cost of reducing the costs of any particular eligible student or eligible school or the difficulty or cost of providing high-quality internet access to any particular eligible student or eligible school, nor shall any eligible student or eligible school be prioritized over any other eligible student or eligible school by reason of any such difficulty or cost.

§ 8. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, after exhaustion of all further judicial review, the 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 of this act directly involved in the controversy in which the judgment shall have been rendered.

§ 9. This act shall take effect immediately, and shall expire and be deemed repealed on the last day of the school year in which the state of emergency declared pursuant to executive order 202 of 2020 terminates.