

# STATE OF NEW YORK

9112

## IN SENATE

December 4, 2020

Introduced by Sens. MAYER, PARKER, LIU, COMRIE, BIAGGI, METZGER, ADDABO, 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:

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "E-Let's Expand Access to Remote Now (E-LEARN) Act".

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

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

14 The legislature further finds Article XI of the New York state Consti-  
15 tution which stipulates 'The Legislature shall provide for the mainte-  
16 nance and support of a system of free common schools, wherein all the  
17 children of the state may be educated' must be continuously upheld even  
18 throughout the ensuing pandemic period.

19 The legislature further finds schools across the state had to quickly  
20 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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1 options to students during the closed down period and many schools are  
2 required to, or are requested to, continue distance learning modality as  
3 an instructional delivery model.

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

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

12 The legislature further finds that high-speed internet access, common-  
13 ly referred to as broadband internet, can be achieved through utiliza-  
14 tion of a variety of technologies, including wired infrastructure via  
15 fiber optic cable, and through wireless technologies such as fixed wire-  
16 less internet and satellite internet, and that taking advantage of all  
17 available and evolving technologies can enable communities currently  
18 without wired infrastructure to nonetheless improve access to high qual-  
19 ity internet until such time as wired infrastructure is made universally  
20 available.

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

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

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

35 The legislature further finds that telecommunication service provid-  
36 ers, notwithstanding their unique attributes, are part of an increasing-  
37 ly integrated telecommunications industry, the soundness of which is  
38 essential, not only to education, but also to the state's economic  
39 growth and general welfare, and portions of whose business are wholly  
40 intrastate.

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

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

53 Therefore, be it resolved, that, the legislature hereby approves the  
54 use of the police power inherent in the state of New York to protect and  
55 promote the safety, life, public health, public convenience, general  
56 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.

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

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

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

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

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

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

5 § 433. Grant of permission for use of information. Notwithstanding  
6 section two-d of this chapter, public school districts, boards of coop-  
7 erative education, the chancellor, charter schools, non-public schools,  
8 approved private schools serving students with disabilities subject to  
9 article eighty-one or eighty-nine of this chapter, state supported  
10 schools subject to article eighty-five of this chapter, or state oper-  
11 ated schools subject to article eighty-seven or eighty-eight of this  
12 chapter, shall provide to eligible students or their families, as appro-  
13 priate, a form requesting information as to whether the eligible student  
14 had high-quality internet access as of the effective date of this  
15 section and continues to have high-quality internet access, and if such  
16 student had high-quality internet access as of such date and continues  
17 to have high-quality internet access, the name of the current provider  
18 of such high-quality internet service, and in either case requesting  
19 permission for the use of names and contact information of such students  
20 or families, as appropriate, for purposes of entering into agreements to  
21 provide such eligible students with high-quality internet access in  
22 accordance with this article or for purposes of the reduction in costs  
23 pursuant to subdivision three of section two hundred twenty-four-c of  
24 the public service law. Such form of request shall be in a form, and  
25 distributed and collected, in such manner as the applicable public  
26 school district, board of cooperative educational services, the chancel-  
27 lor, or eligible school, as applicable, may deem appropriate; provided,  
28 however, that use of information provided shall be limited to use of  
29 only such personally identifiable information as shall be necessary to  
30 satisfy the requirements of this article and subdivision three of  
31 section two hundred twenty-four-c of the public service law. Such form  
32 of request shall be provided to eligible students, or their families, as  
33 appropriate, no later than fifteen days after the effective date of this  
34 article, and shall be translated in the predominant languages other than  
35 English of eligible students and their families served by such eligible  
36 schools.

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

1 board of cooperative educational services, or eligible school, as appro-  
2 priate; and

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

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

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

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

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

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

53 4. Each non-public school, charter school, approved private school  
54 serving students with disabilities subject to article eighty-one or  
55 eighty-nine of this chapter, state supported school subject to article  
56 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

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

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

5 § 186-h. Duties of the department under the E-LEARN program. 1. Defi-  
6 nitions. For the purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

13 § 95-j. E-LEARN fund. 1. There is hereby established in the joint  
14 custody of the comptroller and the commissioner of taxation and finance  
15 the E-LEARN fund to ensure the provision of high-quality internet access  
16 to eligible schools and eligible students in the state through the  
17 program set forth in article nine-A of the education law.

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

21 3. The moneys in the E-LEARN fund shall be kept separate and shall not  
22 be commingled with any other moneys in the custody of the state comp-  
23 troller.

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

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

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

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

54 PROVISIONS RELATING TO CABLE TELEVISION COMPANIES

55 AND TELECOMMUNICATION SERVICE PROVIDERS

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

3     § 224-c. Reimbursement by telecommunication service providers of  
4 eligible students and eligible schools with current high-quality inter-  
5 net access. 1. For the purposes of this section: (a) "Broadband inter-  
6 net access service" means a service provided by wire or radio in New  
7 York state that provides the capability to transmit data to, and receive  
8 data from, all or substantially all internet endpoints, including any  
9 capabilities that are incidental to and enable the operation of the  
10 communications service, but excluding dial-up internet access service.  
11 Broadband internet access service also encompasses any service provided  
12 in New York state that provides a functional equivalent of that service  
13 or that is used to evade the provisions set forth in this section.

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

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

25     (d) "High-quality internet access" means, with respect to broadband  
26 internet access service provided to an eligible student, uninterrupted  
27 broadband internet access service which is not limited to one or more  
28 particular devices and which provides actual and stable download speeds  
29 of at least 25 megabits per second (Mbps) and upload speeds of at least  
30 3 Mbps at all times, and, with respect to broadband internet access  
31 service provided to an eligible school, actual and stable download  
32 speeds of at least 1 Mbps per enrolled student and upload speeds of at  
33 least 1 Mbps per enrolled student at all times.

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

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

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

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

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

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

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

21     5. With respect to each eligible school which was receiving high-qual-  
22 ity internet access as of the effective date of this section, the tele-  
23 communication service provider under contract to provide such high-qual-  
24 ity internet access shall continue to provide such same service under  
25 such same contract, subject to those terms of such same contract which  
26 do not abrogate the provisions of this section. The costs for such high-  
27 quality internet access shall be reduced by the applicable telecommuni-  
28 cation service provider (but not below zero) by an amount equal to the  
29 average expense per eligible school of providing eligible schools with  
30 high-quality internet access pursuant to section four hundred thirty-  
31 five of the education law.

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

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

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

50     § 8. Severability. If any clause, sentence, paragraph, section or part  
51 of this act shall be adjudged by any court of competent jurisdiction to  
52 be invalid, after exhaustion of all further judicial review, the judg-  
53 ment shall not affect, impair or invalidate the remainder thereof, but  
54 shall be confined in its operation to the clause, sentence, paragraph,  
55 section or part of this act directly involved in the controversy in  
56 which the judgment shall have been rendered.

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