

STATE OF NEW YORK

8447

2021-2022 Regular Sessions

IN ASSEMBLY

November 17, 2021

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

AN ACT to amend the public service law, in relation to enacting the "regional broadband expansion and access program act"; and to repeal subdivision 24-e of section 10 of the highway law and section 7 of the transportation corporations law, in relation to the cost of expanding broadband access

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

1 Section 1. Legislative findings. The legislature hereby finds and
2 declares that, based on certain metrics, New York State is number two in
3 the nation for broadband access, but the State's progress is far from
4 over. Nationwide, the State ranks in the middle of the pack when one
5 accounts for overall access to gigabit internet, coupled with the broad-
6 band subscription rate. In 2015, Governor Cuomo established a \$500
7 million "New NY Broadband Program" that was intended to bring high-speed
8 internet access to areas both unserved (download speeds fewer than 25
9 Mbps (megabits per second)) and underserved (download speeds between 25
10 Mbps and 99 Mbps), respectively. One thing became clear as many New
11 Yorkers were unable to access necessary services due to a lack of inter-
12 net access: Governor Cuomo's top-down strategy has failed. As the
13 COVID-19 pandemic has ushered in a new "remote world", where the economy
14 and our healthcare/education systems are dependent on a reliable broad-
15 band infrastructure, access to broadband is needed in order to access
16 necessary services.

17 It is the government's responsibility to design a program that will
18 provide this access. Doing so would increase access to remotely-based
19 employment, education, and health services that will be part of the
20 post-pandemic world. This proposal would completely restructure the
21 State's strategy for delivering adequate broadband service and speeds to
22 underserved areas. Similar to how the State altered course when estab-

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

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1 lishing the Statewide Wireless Network (SWN), the Regional Broadband
2 Expansion and Access Program (RBEAP) would decentralize the current "New
3 NY Broadband" process and permit localities to collaborate on and design
4 regionally-tailored plans to ensure internet access to every citizen in
5 their designated areas. Ultimately, this proposal would put the power
6 back in the hands of localities who understand their own regions better
7 than Albany-based State agencies.

8 Eligible localities would form regional consortia to design plans that
9 would guarantee broadband coverage to every resident in each consorti-
10 um's region, whereby the consortia would have the ability to contract
11 with Internet Service Providers (ISPs) to design plans that work for
12 their own regions. Each consortium shall comprise multiple "regional
13 broadband districts" (RBDs). State funding, utilizing existing or new
14 State and/or Federal funds, would be at each consortium's disposal for
15 numerous purposes, such as the costs of contracting with ISPs to install
16 or bolster broadband infrastructure (fiber optic-based, cable-based, and
17 so on), establishing temporary access programs for citizens to bridge
18 existing gaps, such as by creating "Mobile Hot Spots", among other
19 initiatives. The State would be charged with providing any technical
20 assistance to regional consortia while the latter design their plans,
21 and would help to define adequate broadband speeds. It is understood
22 that "adequate broadband speeds" are different based on numerous vari-
23 ables; however, the speeds and reliability must be enough to ensure each
24 New Yorker can participate in necessary remote-based services such as
25 education, telehealth, and remote meetings.

26 § 2. Short title. This act shall be known and may be cited as the
27 "regional broadband expansion and access program act".

28 § 3. The public service law is amended by adding a new article 12 to
29 read as follows:

30 ARTICLE 12

31 REGIONAL BROADBAND EXPANSION AND ACCESS PROGRAM ACT

32 Section 241. Definitions.

33 242. Regional broadband expansion and access program.

34 243. Broadband districts.

35 244. Regional broadband district plans.

36 245. Eligible costs.

37 § 241. Definitions. For the purposes of this article:

38 1. "Department" shall mean the state department of economic develop-
39 ment.

40 2. "Broadband district" shall mean a district formed by a locality in
41 any of the sixty-two counties of the state as its boundaries are
42 prescribed by law.

43 3. "Regional broadband district" shall mean a regional district formed
44 by neighboring broadband districts.

45 4. "Regional consortia" shall mean when broadband districts collab-
46 orate to submit one or more broadband proposals to the corporation for
47 funding.

48 5. "Program" shall mean the regional broadband expansion and access
49 program.

50 6. "Corporation" shall mean the urban development corporation.

51 7. "Subcommittee" shall mean and be comprised of representatives from
52 governing boards of eligible counties, cities, towns, villages, school
53 districts, tribal lands and any other entity located within the regional
54 broadband district to oversee and advise such district.

55 8. "Internet service provider" shall mean any person, business, entity
56 or organization qualified to do business in the state that provides

1 individuals, corporations, or other entities with the ability to connect
2 to the internet through equipment that is located in-state.

3 9. "Governing board" shall mean and includes the board of supervisors
4 of a county, the town board of a town, the common council of a city, and
5 the board of trustees of a village.

6 10. "Municipality" shall mean and includes any county, city, town, or
7 village located within a broadband district.

8 11. "Indian nation or tribe" means one of the following New York state
9 Indian nations or tribes: Cayuga Nation, Oneida Nation of New York,
10 Onondaga Nation, Poospatuck or Unkechaugue Nation, Saint Regis Mohawk
11 Tribe, Seneca Nation of Indians, Shinnecock Indian Nation, Tonawanda
12 Band of Seneca and Tuscarora Nation.

13 § 242. Regional broadband expansion and access program. 1. The depart-
14 ment shall, in cooperation with the urban development corporation,
15 establish and administer a program to be known as the "regional broad-
16 band expansion and access program" to allow a regional consortia to
17 submit a regionally-based broadband plan for funding by the state. Such
18 regionally-based broadband plan shall guarantee broadband coverage to
19 every resident within the regional broadband district.

20 2. Regional broadband district plans shall be submitted to the depart-
21 ment for review to ensure compliance with state law, that such plan
22 provides broadband services to all residents in such county or region,
23 and that the plan will have the intended effect of expanding broadband
24 services, speed and reliability in the area. After thirty days of
25 receiving a regional broadband district plan, such plan shall be consid-
26 ered approved, unless rejected by the department and corporation due to
27 violations of law or proof that such plan significantly deviates from
28 the intent of the program. Priority shall be given to regional broadband
29 district plans that focus on access to broadband services, followed by
30 plans for reliability and broadband speed.

31 3. The department shall, in consultation with the corporation, promul-
32 gate rules and regulations necessary to carry out the provisions of this
33 article. Notwithstanding any law, rule or regulation to the contrary,
34 the department and any other state agency or authority is authorized to
35 waive any regulatory or statutory rule to implement such regional broad-
36 band district plan if such waiver shall not have an adverse impact on
37 the health or safety of persons within the state.

38 § 243. Broadband districts. A county, at its discretion, shall form a
39 broadband district to seek input from residents, institutions of elemen-
40 tary, secondary and higher education, non-profit organizations, local
41 businesses, community development organizations and any other entity
42 within the broadband district on the availability of broadband access,
43 the reliability of broadband services, and the current level of broad-
44 band speeds within such district. Such broadband district shall be led
45 by the county executive and a representative from each of the county's
46 inner municipalities.

47 § 244. Regional broadband district plans. 1. A consortia of broadband
48 districts shall collaborate and establish a regional broadband district
49 to submit regionally-based broadband plans to the department pursuant to
50 section two hundred forty-two of this article. A subcommittee shall be
51 formed to govern and oversee the actions taken by the regional broadband
52 district.

53 2. At the request of a regional broadband district, the state broad-
54 band program office, in addition to any other state agency or public
55 benefit corporation, shall provide support at no cost to such regional
56 broadband district, including but not limited to:

- 1 a. broadband data or mapping;
- 2 b. logistics;
- 3 c. communications with municipalities within the district;
- 4 d. technical assistance in acquiring proposals and compiling such into
- 5 a regional plan for submission to the state;
- 6 e. assistance working with internet service providers to obtain quotes
- 7 for service buildouts and equipment; and
- 8 f. any additional assistance that such regional broadband district may
- 9 request.

10 3. Any regional broadband district plan proposed by a regional consor-
 11 tia to the state shall include plans to provide every resident and enti-
 12 ty located within the regional broadband district reliable access to
 13 broadband services with speeds that ensure each resident and entity can
 14 participate in necessary remote-based services, including but not be
 15 limited to, education, telehealth and remote meetings.

16 4. Regional broadband districts shall report to the department by
 17 March thirty-first, two thousand twenty-three and annually thereafter on
 18 the prior calendar year's activity. Such report shall include, but shall
 19 not be limited to:

- 20 a. the number of households, businesses, organizations and entities
- 21 served;
- 22 b. the number of households, businesses, organizations and entities
- 23 underserved;
- 24 c. the number of households, businesses, organizations and entities
- 25 not served;
- 26 d. the speed of broadband service provided to such households, busi-
- 27 nesses, organizations and entities;
- 28 e. the cost to connect households, businesses, organizations and enti-
- 29 ties to broadband service;
- 30 f. the reason for any variation in such costs within the regional
- 31 broadband district; and
- 32 g. the total cost of providing broadband service to each broadband
- 33 district.

34 § 245. Eligible costs. Eligible costs of any regional broadband
 35 district plan shall include but not be limited to the cost of:

- 36 1. contracting with internet service providers to install or strength-
- 37 en broadband infrastructure;
- 38 2. temporary access programs for citizens to bridge existing gaps of
- 39 broadband access;
- 40 3. expanding 5G wireless into underserved areas;
- 41 4. installing fiber optic or cable broadband infrastructure, including
- 42 last-mile lines, into a resident's home or into buildings of any person,
- 43 business, organization, not-for-profit organization, municipality or
- 44 entity;
- 45 5. allowing for future technologies to qualify;
- 46 6. providing cost-assistance to low-income residents to pay for access
- 47 to broadband or wireless services; and
- 48 7. additional unanticipated costs deemed necessary to expand broadband
- 49 access.

50 § 4. Subdivision 24-e of section 10 of the highway law is REPEALED.

51 § 5. Section 7 of the transportation corporations law is REPEALED.

52 § 6. This act shall take effect immediately.