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:

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

It is the government's responsibility to design a program that will provide this access. Doing so would increase access to remotely-based employment, education, and health services that will be part of the post-pandemic world. This proposal would completely restructure the State's strategy for delivering adequate broadband service and speeds to 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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lishing the Statewide Wireless Network (SWN), the Regional Broadband Expansion and Access Program (RBEAP) would decentralize the current "New NY Broadband" process and permit localities to collaborate on and design regionally-tailored plans to ensure internet access to every citizen in their designated areas. Ultimately, this proposal would put the power back in the hands of localities who understand their own regions better than Albany-based State agencies.

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

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

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

ARTICLE 12

REGIONAL BROADBAND EXPANSION AND ACCESS PROGRAM ACT

Section 241. Definitions.
242. Regional broadband expansion and access program.
243. Broadband districts.
244. Regional broadband district plans.
245. Eligible costs.

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

1. "Department" shall mean the state department of economic development.

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

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

4. "Regional consortia" shall mean when broadband districts collaborate to submit one or more broadband proposals to the corporation for funding.

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

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

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

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

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

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

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

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

§ 242. Regional broadband expansion and access program. 1. The department shall, in cooperation with the urban development corporation, establish and administer a program to be known as the "regional broadband expansion and access program" to allow a regional consortia to submit a regionally-based broadband plan for funding by the state. Such regionally-based broadband plan shall guarantee broadband coverage to every resident within the regional broadband district.

2. Regional broadband district plans shall be submitted to the department for review to ensure compliance with state law, that such plan provides broadband services to all residents in such county or region, and that the plan will have the intended effect of expanding broadband services, speed and reliability in the area. After thirty days of receiving a regional broadband district plan, such plan shall be considered approved, unless rejected by the department and corporation due to violations of law or proof that such plan significantly deviates from the intent of the program. Priority shall be given to regional broadband district plans that focus on access to broadband services, followed by plans for reliability and broadband speed.

3. The department shall, in consultation with the corporation, promulgate rules and regulations necessary to carry out the provisions of this article. Notwithstanding any law, rule or regulation to the contrary, the department and any other state agency or authority is authorized to waive any regulatory or statutory rule to implement such regional broadband district plan if such waiver shall not have an adverse impact on the health or safety of persons within the state.

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

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

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

a. broadband data or mapping;
b. logistics;
c. communications with municipalities within the district;
d. technical assistance in acquiring proposals and compiling such into a regional plan for submission to the state;
e. assistance working with internet service providers to obtain quotes for service buildouts and equipment; and
f. any additional assistance that such regional broadband district may request.
3. Any regional broadband district plan proposed by a regional consortia to the state shall include plans to provide every resident and entity located within the regional broadband district reliable access to broadband services with speeds that ensure each resident and entity can participate in necessary remote-based services, including but not be limited to, education, telehealth and remote meetings.
4. Regional broadband districts shall report to the department by March thirty-first, two thousand twenty-three and annually thereafter on the prior calendar year's activity. Such report shall include, but shall not be limited to:
a. the number of households, businesses, organizations and entities served;
b. the number of households, businesses, organizations and entities underserved;
c. the number of households, businesses, organizations and entities not served;
d. the speed of broadband service provided to such households, businesses, organizations and entities;
e. the cost to connect households, businesses, organizations and entities to broadband service;
f. the reason for any variation in such costs within the regional broadband district; and
g. the total cost of providing broadband service to each broadband district.
§ 245. Eligible costs. Eligible costs of any regional broadband district plan shall include but not be limited to the cost of:
1. contracting with internet service providers to install or strengthen broadband infrastructure;
2. temporary access programs for citizens to bridge existing gaps of broadband access;
3. expanding 5G wireless into underserved areas;
4. installing fiber optic or cable broadband infrastructure, including last-mile lines, into a resident's home or into buildings of any person, business, organization, not-for-profit organization, municipality or entity;
5. allowing for future technologies to qualify;
6. providing cost-assistance to low-income residents to pay for access to broadband or wireless services; and
7. additional unanticipated costs deemed necessary to expand broadband access.

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

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

§ 6. This act shall take effect immediately.