

STATE OF NEW YORK

3184

2021-2022 Regular Sessions

IN SENATE

January 28, 2021

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

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

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

LBD02813-01-1

1 children of the state may be educated' must be continuously upheld even
2 throughout the ensuing pandemic period.

3 The legislature further finds schools across the state had to quickly
4 implement technological programs and devices to deliver remote learning
5 options to students during the closed down period and many schools are
6 required to, or are requested to, continue distance learning modality as
7 an instructional delivery model.

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

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

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

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

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

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

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

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

53 The legislature further finds that it is necessary to establish a
54 competitively-neutral funding mechanism to provide the resources neces-
55 sary to assure and maintain satisfaction of the constitutional education
56 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

1 respect to broadband internet access service provided to an eligible
2 school, actual and stable download speeds of at least 1 Mbps per
3 enrolled student and upload speeds of at least 1 Mbps per enrolled
4 student at all times throughout the applicable school year.

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

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

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

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

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

1 be limited to the number of eligible students at each eligible school,
2 the degree to which multiple eligible students are members of the same
3 household and reside at the same residence, the response rate of grants
4 of permission pursuant to section four hundred thirty-three of this
5 article, the degree of need of each eligible school and their respective
6 classrooms, and, subject to section four hundred thirty-seven of this
7 article, the different regional factors affecting the provision of high-
8 quality internet access.

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

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

1 internet access on a continual basis at the residence of such eligible
2 student, whether such residence is temporary or permanent, in such
3 manner as shall be deemed appropriate by such public school district,
4 board of cooperative educational services, or eligible school, as appro-
5 priate; and

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

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

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

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

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

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

1 4. Each non-public school, charter school, approved private school
2 serving students with disabilities subject to article eighty-one or
3 eighty-nine of this chapter, state supported school subject to article
4 eighty-five of this chapter, or state operated school subject to article
5 eighty-seven or eighty-eight of this chapter which is an eligible school
6 shall contract for high-quality internet access on a continual basis at
7 such eligible school sufficient to support all instructional and admin-
8 istrative operations of such eligible school to the extent that such
9 buildings and eligible schools did not have high-quality internet access
10 as of the effective date of this article and continue to lack high-quality
11 internet access.

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

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

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

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

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

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

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

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

9 § 186-h. Duties of the department under the E-LEARN program. 1. Defi-
10 nitions. For the purposes of this section:

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

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

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

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

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

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

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

55 (d) Failure of a telecommunication service provider to make timely
56 payment under this section will result in the levy of a late payment

1 charge of one and one-half percent per month pro rata per diem on the
2 delinquent contribution.

3 (e) If a telecommunication service provider's contribution to the
4 E-LEARN fund in a given fiscal year is less than one hundred fifty
5 dollars such telecommunication service provider will not be required to
6 pay a contribution for such year.

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

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

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

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

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

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

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

51 6. The requirements of this section shall not be qualified by the
52 difficulty or cost of providing high-quality internet access to any
53 particular eligible student or eligible school, nor shall any eligible
54 student or eligible school be prioritized over any other eligible
55 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

1 applicable to identify those eligible schools and school buildings
2 already receiving high-quality internet access as of the effective date
3 of this section, and provide such information to the department of
4 public service for purposes of subdivision five of this section.

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

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

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

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

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

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

54 § 8. Severability. If any clause, sentence, paragraph, section or part
55 of this act shall be adjudged by any court of competent jurisdiction to
56 be invalid, after exhaustion of all further judicial review, the judg-

1 ment shall not affect, impair or invalidate the remainder thereof, but
2 shall be confined in its operation to the clause, sentence, paragraph,
3 section or part of this act directly involved in the controversy in
4 which the judgment shall have been rendered.

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