

STATE OF NEW YORK

4594--A

2023-2024 Regular Sessions

IN ASSEMBLY

February 17, 2023

Introduced by M. of A. BICHOTTE HERMELYN, COLTON, HYNDMAN, LAVINE, ZEBROWSKI, HEVESI, SIMON, BRONSON, GUNTHER, AUBRY, PEOPLES-STOKES, HUNTER -- Multi-Sponsored by -- M. of A. THIELE -- read once and referred to the Committee on Corporations, Authorities and Commissions -- recommitted to the Committee on Corporations, Authorities and Commissions in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public service law and the state finance law, in relation to state contracts being only with internet service providers compliant with net neutrality

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

1 Section 1. This act shall be known and may be cited as the "NYS Net
2 Neutrality Protection Act".

3 § 2. Subdivision 1 of section 5 of the public service law is amended
4 by adding a new paragraph j to read as follows:

5 j. To every broadband internet line which lies wholly within the state
6 and that part within the state of New York of every broadband internet
7 line which lies partly within and partly without the state and to the
8 persons or corporations owning, leasing or operating any such broadband
9 internet line.

10 § 3. Section 5 of the public service law is amended by adding a new
11 subdivision 7 to read as follows:

12 7. The commission shall require any person engaged in the provision of
13 broadband internet access service in New York state to report to the
14 commission, and publicly disclose annually, accurate information regard-
15 ing the network management practices, performance, and commercial terms
16 of its broadband internet access services sufficient for consumers to
17 make informed choices regarding use of such services and for content,

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

LBD07720-02-4

1 application, service, and device providers to develop, market, and main-
2 tain internet offerings.

3 § 4. Subdivision 1 of section 165 of the state finance law is amended
4 by adding three new paragraphs f, g and h to read as follows:

5 f. A "net neutral source of internet services" shall mean an internet
6 service provider who adheres to the principles of net neutrality.

7 g. A "non-net neutral source of internet services" shall mean an
8 internet service provider who violates any of the principles of net
9 neutrality.

10 h. "The principles of net neutrality" shall mean the rules and regu-
11 lations under the open internet report and order on remand, declaratory
12 ruling, and order by the federal communications commission released
13 March twelfth, two thousand fifteen, GN Docket No. 14-28.

14 § 5. Section 165 of the state finance law is amended by adding a new
15 subdivision 9 to read as follows:

16 9. Prohibition on purchase of internet services from a non-net neutral
17 source of internet services.

18 a. (i) With respect to contracts described in subparagraphs (ii) and
19 (iii) of this paragraph, and in accordance with such subparagraphs, the
20 state and any governmental agency or political subdivision or public
21 benefit corporation or municipality of the state shall not contract for
22 the supply of internet services with any contractor who does not agree
23 to stipulate to the following, if there is another contractor who will
24 contract to supply internet services of comparable quality at a compara-
25 ble price or cost, the contractor and any individual or legal entity in
26 which the contractor holds a ten percent or greater ownership interest
27 and any individual or legal entity that holds a ten percent or greater
28 ownership interest in the contractor shall make lawful steps in good
29 faith to conduct any business operations as a net neutral source of
30 internet services.

31 (ii) In the case of contracts let by a competitive process, whenever
32 the responsive and responsible offerer having the lowest price or best
33 value offer has not agreed to stipulate to the conditions set forth in
34 this subdivision and another responsive and responsible offerer who has
35 agreed to stipulate to such conditions has submitted an offer shall
36 determine that the contract be awarded to the lowest price or best value
37 offer for internet services from a net neutral source of internet
38 services.

39 (iii) In the case of contracts let by other than a competitive process
40 internet services involving an expenditure of an amount greater than the
41 discretionary buying threshold as specified in section one hundred
42 sixty-three of this article, the contracting entity shall not award to a
43 proposed contractor who has not agreed to stipulate to the conditions
44 set forth in this subdivision unless the entity seeking to use the
45 internet services determines that the internet services are necessary
46 for the entity to perform its functions and there is no other responsi-
47 ble contractor who will supply internet services of comparable quality
48 at a comparable price. Such determinations shall be made in writing and
49 shall be public documents.

50 b. Upon receiving information that a contractor who has made the stip-
51 ulation required by this subdivision is in violation thereof, the
52 contracting entity shall review such information and offer the contrac-
53 tor an opportunity to respond. If the contracting entity finds that a
54 violation has occurred, it shall take such action as may be appropriate
55 and provided for by law, rule or contract, including, but not limited

1 to, imposing sanctions, seeking compliance, recovering damages or
2 declaring the contractor in default.

3 c. As used in this subdivision, the term "contract" shall not include
4 contracts with governmental and non-profit organizations, contracts
5 awarded pursuant to emergency procurement procedures or contracts,
6 resolutions, indentures, declarations of trust or other instruments
7 authorizing or relating to the authorization, issuance, award, sale or
8 purchase of bonds, certificates of indebtedness, notes or other fiscal
9 obligations, provided that the policies of this subdivision shall be
10 considered when selecting a contractor to provide financial or legal
11 advice, and when selecting managing underwriters in connection with such
12 activities.

13 d. The provisions of this subdivision shall not apply to contracts for
14 which the state or other contracting entity receives funds administered
15 by the United States, except to the extent congress has directed to not
16 withhold funds from states and localities that choose to implement
17 selective purchasing policies based on an agreement to comply with the
18 principles of net neutrality, or to the extent that such funds are not
19 otherwise withheld by congress.

20 § 6. This act shall take effect immediately.