

S. 8008--C A. 9008--C
SENATE – ASSEMBLY
BUDGET BILL
January 19, 2022

Working to Implement Reliable and Equitable Deployment of Broadband Act

WIRED Broadband Act

PART MMM

Section 1. Short title. This act shall be known and may be cited as the "working to implement reliable and equitable deployment of broadband act (WIRED broadband act)". § 2. Section 1 of chapter 174 of the laws of 1968, constituting the New York state urban development corporation act, is amended by adding a new section 16-gg to read as follows:

§ 16-gg. Division of Broadband Access.

1. Statement of Legislative findings and purpose. The legislature hereby finds and declares that: access to high-speed, reliable, and affordable broadband is essential for education, economic growth, and full participation in civic life; the persistence of the digital divide is a key barrier to improving the general welfare; the digital divide disproportionately affects communities of color, lower-income areas, rural areas, and other vulnerable populations, and the benefits of broadband access should be available to all; a robust and competitive internet marketplace in New York supports general economic development and benefits New Yorkers with improved internet service and affordability; the state has a responsibility to assist in ending the digital divide, supporting a more robust and competitive internet marketplace, and carrying out other actions to ensure universal access to high-speed, reliable, and affordable broadband.

2. Definitions. The following definitions shall apply throughout this section unless the context clearly requires otherwise: (a) "Advisory committee" or "committee" shall mean the broadband development advisory committee created by this section. (b) "Broadband", "broadband service", or "broadband internet" means a mass-market retail service by wire or radio 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. (c) "Commissioner" shall mean the commissioner of economic development. (d) "Director" shall mean the director of the division of broadband access. (e) "Division" means the division of broadband access created by this section. (f) "Unserved location" means a broadband-serviceable location, as determined by the division, that has no access to broadband service or lacks access to reliable broadband service at 25 megabits per second for downloads and 3 megabits per second upload speed. (g) "Underserved location" means a broadband-serviceable location, as determined by the division, that only has access to broadband service of at least 25 megabits per second but less than 100 megabits per second download speed and at least 3 megabits per second but less than 20 mega-bits per

second upload speed. (h) Should the division determine that the definitions under paragraphs (f) and (g) of this subdivision concerning download and upload speeds be outdated as a result of advancements in broadband technological capabilities or standards, such download and upload speeds established under this section shall be superseded by guidelines, rules, or regulations established by the division; provided that the download and upload speeds included in the definitions shall not be reduced.

3. Division of broadband access; director; employees. There is hereby created within the department of economic development a division of broadband access. The head of such office shall hold the title of director and be appointed by the commissioner, and shall hold office at the pleasure of the commissioner.

4. Powers and duties of the division of broadband development. The division shall have the power to: (a) Coordinate the activities of all state agencies performing functions affecting access to high-speed, reliable, and affordable broadband. (b) Conduct research and analyses of matters affecting access to high-speed, reliable, and affordable broadband. (c) Advise and make recommendations to the commissioner on matters affecting access to high-speed, reliable, and affordable broadband. (d) Provide advisory assistance to municipalities, state and local authorities, and other entities to expand access to high-speed, reliable, and affordable broadband. (e) Establish and implement programs, including grant programs, to expand access to high-speed, reliable, and affordable broadband, including but not limited to: programs to improve broadband access at unserved and underserved locations; programs to deploy broadband infrastructure owned or managed by municipalities, state and local authorities, entities established pursuant to section 99-y of the general municipal law, or not-for-profit entities; programs to deploy innovative broadband technologies and means to improve broadband access; including in low-income areas; programs to improve digital equity, digital inclusion, and digital literacy. (f) Take additional actions the division deems necessary to expand access to high-speed, reliable, and affordable broadband.

5. Rules and regulations. The commissioner may adopt any necessary rules, regulations, or guidelines to effectuate the purposes of the division. Notwithstanding any conflicting provision of this article, the commissioner may adopt any necessary rules, regulations, or guidelines for state participation in federal broadband programs consistent with the requirements set forth under the Infrastructure Investment and Jobs Act, American Rescue Plan Act, Digital Equity Act, or any other federal program determined as directly relevant to increasing access to high-speed, reliable, and affordable broadband by the commissioner.

6. Broadband access advisory committee. (a) There is hereby created in the division of broadband access a broadband development advisory committee. The committee shall consist of 16 members, four of which are to be appointed by the governor, one of which is to be appointed by the speaker of the assembly, and one of which is to be appointed by the temporary president of the senate. The commissioners, or designees thereof, of the department of public service, department of labor, department of transportation, office of general services, department of economic development, department of homeland security and emergency services, division of housing and community renewal, and education department, the president of the New York power authority, and the director of the division of the budget shall serve as ex-officio members. The governor shall designate a chairperson from the members of the advisory committee, to serve as such at the pleasure of the governor. In appointing the members of the advisory committee the governor shall ensure that at least one member is an

individual representing a telecommunications union, at least one member is an individual with substantial expertise in tribal affairs, and two of the members are individuals who have substantial expertise in telecommunications policy, broadband development, grant-making, or internet regulation, of which one shall have expertise on service providers with over 100,000 subscribers in New York state and one shall have expertise on service providers with less than 100,000 subscribers in New York state. (b) All members of the advisory committee, other than the ex-officio members, shall serve for terms of three years, such term shall commence on the first day the committee is convened. Any vacancies occurring otherwise than by expiration of term shall be filled in the same manner as original appointments for the balance of the unexpired term. (c) The advisory committee shall meet at least twice in each calendar year. Special meetings may be called by its chairperson and shall be called by the chairperson at the request of the director of the division of broadband access. (d) No member of the advisory committee shall be disqualified from holding any other public office, nor forfeit any such office by reason of appointment hereunder, notwithstanding the provisions of any general, special or local law, ordinance or city charter, provided however that members appointed by the governor, speaker of the assembly, or temporary president of the senate shall be considered state officers and subject to the provisions of paragraph (a) of subdivision 8 of section 73 of the public officers law. (e) The members of the advisory committee shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their duties hereunder. (f) The committee shall: (i) advise the director in carrying out the functions, powers and duties of the division, as set forth in this article. (ii) advise the director, the governor, and the legislature concerning policy changes necessary to promote expansion and development of access to high-speed, reliable, and affordable broadband. (iii) advise the director, the governor, and the legislature concerning existing policies of state agencies which may be counter-productive or inimical to promote expansion and deployment of high-speed, reliable, and affordable broadband. (iv) advise the director, the governor, and the legislature concerning the development of inter-governmental cooperation among agencies of the federal, state, and local governments and cooperation between private industry and government so as to promote expansion, deployment and continued provision of high-speed, reliable, and affordable broadband. (v) advise the director, the governor, and the legislature on issues related to fostering consumer choice, increasing competition in the broadband industry, and promoting open-access infrastructure. (vi) advise the director, in consultation with the division of broadband access, on potential guidelines or regulations for implementation of broadband-related programs. (vii) advise the director, the governor, and the legislature on policies related to the deployment of wireless and cellular services, including deployment of small cell networks for access to 5G services. (viii) advise the director on policies to reduce regulatory obstacles and streamline regulations to promote access to high-speed, reliable, and affordable Broadband. (ix) advise the director on policies to maximize access to high-speed, reliable, and affordable broadband in affordable housing projects. (x) advise the director on policies relevant to ensuring that senior citizens have access to high-speed, reliable, and affordable broadband. (xi) make periodic recommendations as to updates to the broadband report required by the Comprehensive Broadband Connectivity Act.

7. ConnectALL deployment program. The ConnectALL deployment program is hereby established to provide grant funding to construct infrastructure necessary to provide broadband services to unserved and underserved locations in the state. Grants issued pursuant to this program shall facilitate projects that, at a minimum, provide reliable internet service with consistent speeds of at least 100 megabits per second for download and at least 20 megabits per second for upload, unless this requirement is waived

for a specific project or location and a different speed level is approved by the division, but under no circumstances less than 25 megabits per second download and 3 megabits per second upload; provided further that applicants for grant funding under this section may include incorporated organizations, Native American tribes or tribal organizations, local units of government, or a group of any of the above entities; provided further that an applicant for grant funding under this section shall demonstrate suitable fiscal, technical, operational, and management capabilities as determined by the division; provided further that an applicant for grant funding under this section shall provide certifications as to compliance with relevant safety standards as determined by the division, including the National Electrical Safety Code; provided further that an applicant for grant funding under this section shall provide certifications as to compliance with relevant workplace protections as determined by the division including the Occupational Safety and Health Act, the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, and New York State labor and employment laws; provided further that an applicant for grant funding under this section shall submit to the division a workforce plan in a format determined by the division which, to the extent practicable, shall include: (a) information relating to whether the construction workforce will be directly employed or subcontracted; (b) the anticipated size of the workforce required to carry out the proposed work; (c) a description of plans to maximize use of local or regional workforce; and (d) a description of the expected workforce safety standards and training to ensure the project is completed at a high standard. The division shall establish the procedures to solicit, receive and evaluate applications for the program consistent with rules, regulations, or guidelines established by the commissioner; provided that preference shall be given to applications that: (a) are capable of delivering speeds of 1 gigabit per second download and 1 gigabit per second upload to the end user; (b) provide service to locations in unserved areas as determined by the division; (c) commit not to impose caps on data usage on the service provided to the end-user or to block, throttle, or prioritize internet content in the general course of business; and (d) have and commit to maintaining high standards of workplace safety practices, training, certification or licensure for all relevant workers, and compliance with state and federal workplace protections.

8. ConnectALL municipal assistance program. The ConnectALL municipal assistance program is hereby established to provide grant funding to municipalities, state and local authorities, and entities established pursuant to section 99-y of the general municipal law to plan and construct infrastructure necessary to provide broadband services, support the adoption of broadband services, or other purposes for maximizing the effectiveness of municipal broadband programs as determined by the division. For the purposes of broadband infrastructure, such grants issued pursuant to this program shall facilitate projects that, at a minimum, provide reliable internet service with consistent speeds of at least 100 megabits per second for download and at least 20 megabits per second for upload, unless this requirement is waived for a specific project or location and a different speed level is approved by the division, but under no circumstances less than 25 megabits per second download and 3 megabits per second upload; provided further that an applicant for grant funding under this section shall demonstrate suitable fiscal, technical, operational, and management capabilities as determined by the division; provided further that an applicant for grant funding under this section shall provide certifications as to compliance with relevant safety standards as determined by the division, including the National Electrical Safety Code; provided further that an applicant for grant funding under this section shall provide certifications as to compliance with relevant workplace protections as determined by the division including the Occupational Safety and Health Act, the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, and New York state labor and employment laws; provided further that an

applicant for grant funding under this section shall submit to the division a workforce plan in a format determined by the division which, to the extent practicable, shall include: (a) information relating to whether the construction workforce will be directly employed or subcontracted; (b) the anticipated size of the workforce required to carry out the proposed work; (c) a description of plans to maximize use of local or regional workforce; and (d) a description of the expected workforce safety standards and training to ensure the project is completed at a high standard. The division shall establish the procedures to solicit, receive and evaluate proposals for the program consistent with, rules, regulations, or guidelines established by the commissioner; provided that preference shall be given to applications that: (a) are capable of delivering speeds of 1 gigabit per second download and 1 gigabit per second upload to the end user; (b) provide service to locations in unserved areas as determined by the division; (c) commit not to impose caps on data usage on the service provided to the end-user or to block, throttle, or prioritize internet content in the general course of business; and (d) have and commit to maintaining high standards of workplace safety practices, training, certification or licensure for all relevant workers, and compliance with state and federal workplace protections.

9. ConnectALL innovation grant program. The ConnectALL innovation grant program is hereby established to develop, pilot, and deploy innovative models and technologies for the delivery of broadband services. Grants issued pursuant to this program shall: (a) benefit the development of innovative and new broadband solutions and technologies; (b) deploy innovative broadband technology to rural, low-income, or other areas that would be unlikely to otherwise see such deployment; (c) promote critical private sector investment in such technologies; (d) provide seed funding for the development of such technologies and products; or (e) foster collaboration between the academic research community and the business sector for such purposes. The division shall establish the procedures to solicit, receive and evaluate proposals for the program consistent with rules, regulations, or guidelines established by the commissioner.

10. ConnectALL digital equity grant program. The ConnectALL digital equity grant program is hereby established to support individuals to have the information technology capacity needed for full participation in society and the economy, including the effective implementation of a State Digital Equity Plan or any successor plan. Grants issued pursuant to this program shall be awarded in a manner and form as determined by the division consistent with all relevant federal laws, codes, rules, and regulations associated with the federal Digital Equity Act as established under the Infrastructure Investment and Jobs Act. The division shall establish such State Digital Equity Plan and the procedures to solicit, receive and evaluate proposals for the program consistent with rules, regulations, or guidelines established by the commissioner.

11. Assistance of other agencies. To effectuate the purposes of this article, the director may request from any department, division, board, bureau, commission or other agency of the state or from any public corporation or district, and the same are authorized to provide, such assistance, services and data as will enable the office properly to carry out its functions, powers and duties hereunder.

12. New NY Broadband Program; transfer. All the functions and powers possessed by and all the obligations and duties of the state broadband program office and the New NY Broadband Program are hereby transferred and assigned to and assumed by the division.

13. Reporting. The division shall: (a) in a form and manner prescribed in accordance with the Infrastructure Investment and Jobs Act or American Rescue Plan Act, make publicly available information

relevant to long term plans for the use of broadband expansion funds, the mechanisms by which the division will award such funds, the entities that will receive such funds from the division, progress reports on the use and disbursement of such funds by the division, and a comprehensive final report on the activities of the division; and (b) every six months, beginning twelve months after the first disbursement to a grant awardee under any program established under this section, until such a time that all funds associated with all programs established under this section have been fully expended, submit a report to the governor, the temporary president of the senate, and the speaker of the assembly setting forth the activities undertaken by the program. Such reports shall include, but need not be limited to, the details of the grants and recipients, locations of the projects, and such other information as the division deems necessary and appropriate, to the extent that the production such reporting is not duplicative of federal reporting requirements associated with broadband expansion in New York state under the Infrastructure Investment and Jobs Act or American Rescue Plan Act. Such reports shall be included on the department's website and any other publicly accessible state database that list economic development programs as determined by the director.

§ 3. The general municipal law is amended by adding a new section 99-y to read as follows:

§ 99-y. Internet access and communications. The governing body of any county, city, town or village is hereby authorized and empowered to establish, construct, and maintain broadband and related telecommunications infrastructure, or to contract for the construction and maintenance of such services with a corporation or nonprofit organization, and for the maintenance, care, and replacement of infrastructure in connection therewith, if such governing body finds that such facilities are necessary. For the purposes of this section, "nonprofit organization" shall mean a corporation having tax exempt status under section 501 (c) (3) of the United States internal revenue code, or any organization incorporated under the not-for-profit corporation law.

§ 4. The labor law is amended by adding a new section 224-e to read as follows:

§ 224-e. Wage requirements for certain broadband projects. 1. For purposes of this section, a "covered broadband project" means a broadband project funded by programs established pursuant to subdivisions seven and eight of section sixteen-gg of the New York state urban development corporation act. 2. Notwithstanding the provisions of section two hundred twenty-four-a of this article, a covered broadband project shall be subject to prevailing wage requirements in accordance with sections two hundred twenty and two hundred twenty-b of this article, provided that a covered broadband project may still otherwise be considered a covered project pursuant to section two hundred twenty-four-a of this article if it meets the definition therein. 3. For purposes of this section, the "fiscal officer" shall be deemed to be the commissioner. The enforcement of any covered broadband project under this section shall be subject to the requirements of sections two hundred twenty, two hundred twenty-a, two hundred twenty-b, two hundred twenty-three, two hundred twenty-four-b of this article, and section two hundred twenty-seven of this chapter and within the jurisdiction of the fiscal officer; provided, however, nothing contained in this section shall be deemed to construe any covered broadband project as otherwise being considered public work pursuant to this article. 4. The fiscal officer may issue rules and regulations governing the provisions of this section. Violations of this section shall be grounds for determinations and orders pursuant to section two hundred twenty-b of this article. 5. Each owner and developer subject to the requirements of this section shall comply with the objectives and goals of certified minority and women-owned business enterprises pursuant to article fifteen-A of the executive

law and certified service-disabled veteran-owned businesses pursuant to article seventeen-B of the executive law. The department in consultation with the directors of the division of minority and women's business development and of the division of service-disabled veterans' business development shall make training and resources available to assist minority and women-owned business enterprises and service-disabled veteran-owned business enterprises undertaking covered broadband projects to achieve and maintain compliance with prevailing wage requirements. The department shall make such training and resources available online and shall afford minority and women-owned business enterprises and service-disabled veteran-owned business enterprises an opportunity to submit comments on such training. 6. (a) The fiscal officer shall report to the governor, the temporary president of the senate, and the speaker of the assembly by July first, two thousand twenty-three and annually thereafter, on the participation of minority and women-owned business enterprises undertaking covered broadband projects subject to the provisions of this section as well as the diversity practices of contractors and subcontractors employing workers on such projects. (b) Such reports shall include aggregated data on the utilization and participation of minority and women-owned business enterprises, the employment of minorities and women in construction-related jobs on such projects, and the commitment of contractors and subcontractors on such projects to adopting practices and policies that promote diversity within the workforce. The reports shall also examine the compliance of contractors and subcontractors with other equal employment opportunity requirements and anti-discrimination laws, in addition to any other employment practices deemed pertinent by the commissioner. (c) The fiscal officer may require any owner or developer to disclose information on the participation of minority and women-owned business enterprises and the diversity practices of contractors and subcontractors involved in the performance of any covered broadband project. It shall be the duty of the fiscal officer to consult and to share such information in order to effectuate the requirements of this section.

§ 5. This act shall take effect immediately.