

**Department of Legislative Services**  
Maryland General Assembly  
2018 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 287 (Senator Manno, *et al.*)  
Education, Health, and Environmental Affairs

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**State Funds - Procurement of Services From Internet Service Providers -  
Restriction**

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This bill prohibits the use of State funds to procure services from an Internet service provider (ISP) that blocks specified content, impairs or degrades lawful Internet traffic in specified ways, or engages in commercial traffic preferencing, as specified by the bill.

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**Fiscal Summary**

**State Effect:** The bill has no material effect on State governmental operations or finances.

**Local Effect:** The bill has no material effect on local governmental operations or finances.

**Small Business Effect:** Minimal.

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**Analysis**

**Bill Summary:** The bill defines “reasonable network management” to mean a practice that primarily is used for and tailored to achieving a legitimate network management purpose, taking into account the particular network architecture and technology of the broadband Internet access service. It does not include other business practices.

State funds may not be used by the State, a political subdivision, or a person awarded a contract by either of those entities to procure services from an ISP that:

- blocks lawful content, applications, services, or nonharmful devices, subject to reasonable network management;

- impairs or degrades lawful Internet traffic on the basis of Internet content, application, or service, or use of a nonharmful device, subject to reasonable network management; or
- engages in commercial traffic preferencing, including specified actions, either in exchange for consideration from a third party or to benefit an affiliated entity.

**Current Law:** State law does not restrict the use of State funds to procure Internet services.

**Background:** In December 2017, the Federal Communications Commission (FCC) approved a repeal of existing “net neutrality” regulations that had been in place for two years and that barred ISPs from restricting Internet traffic on their services. The FCC also reclassified broadband Internet service as an “information service” rather than a “telecommunications service,” thereby limiting the FCC’s authority to regulate broadband service in the future. The order included a preemption clause that prevents states from adopting their own net neutrality rules, although some states dispute whether the preemption clause is valid. The repeal is scheduled to take effect April 23, 2018.

With the repeal of the net neutrality rules, ISPs can slow down or block access to some websites. They can also accept fees from companies to make their content load faster than other sites.

According to *Consumer Reports*, 26 states have introduced legislation to mitigate the effects of the repeal of net neutrality, and several governors have signed executive orders to enact their own net neutrality rules. As of February 28, 2018, Washington is the only state to successfully pass net neutrality legislation, which is awaiting the Governor’s signature. The executive orders that have been signed in several states generally use the power of state contracting to require or pressure ISPs to abide by the principles of net neutrality in the respective states. In addition, the Attorneys General of 22 states (including Maryland) have filed a lawsuit seeking to block the FCC’s order. That lawsuit is currently pending.

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## Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Information Technology; Montgomery and Prince George’s counties; Maryland Association of Counties; cities of Annapolis and Bowie; Maryland State Department of Education; University System of Maryland;  
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Department of Budget and Management; Department of General Services; Board of Public Works; *Federal Register*; New York Attorney General's Office; FastCompany.com; *Consumer Reports*; Department of Legislative Services

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