

# STATE OF NEW YORK

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6538

2021-2022 Regular Sessions

## IN ASSEMBLY

March 19, 2021

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Introduced by M. of A. MAGNARELLI -- read once and referred to the  
Committee on Transportation

AN ACT to amend the highway law and the transportation corporations law,  
in relation to agreements for fiber optic utility use and occupancy of  
state right of way

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

1 Section 1. Subdivision 24-e of section 10 of the highway law, as added  
2 by section 1 of part RRR of chapter 59 of the laws of 2019, is amended  
3 to read as follows:

4 24-e. The commissioner of transportation is hereby authorized to enter  
5 into an agreement with any fiber optic utility for use and occupancy of  
6 the state right of way for the purposes of installing, modifying, relo-  
7 cating, repairing, operating, or maintaining fiber optic facilities.  
8 Such agreement may include a fee for use and occupancy of the right of  
9 way, provided, however, such fee shall not be greater than fair market  
10 value. Any provider using or occupying a right of way in fulfillment of  
11 a state grant award through the New NY Broadband Program shall not be  
12 subject to a fee for such use or occupancy. Any provider that is owned  
13 and operated by a municipality, or is owned and operated by a domestic  
14 corporation as such term is defined in subparagraph five of paragraph  
15 (a) of section one hundred two of the not-for-profit corporation law and  
16 possessing a federal tax exemption pursuant to paragraph (3) of  
17 subsection (c) of section 501 of the federal internal revenue code (26  
18 United States Code Section 501(c)(3)) shall not be subject to a fee for  
19 such use or occupancy. Any fee for use or occupancy charged to a fiber  
20 optic utility shall not be passed through in whole or in part as a fee,  
21 charge, increased service cost, or by any other means by a fiber optic  
22 utility to any person or entity that contracts with such fiber optic  
23 utility for service. Any compensation received by the state pursuant to  
24 such agreement shall be deposited by the comptroller into the special

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

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1 obligation reserve and payment account of the dedicated highway and  
2 bridge trust fund established pursuant to section eighty-nine-b of the  
3 state finance law. Nothing herein shall impair, inhibit, or otherwise  
4 affect the ability of any municipality to regulate zoning, land use, or  
5 any other power or authority granted under the law. For purposes of  
6 this subdivision, "municipality" shall include a county, city, village,  
7 or town.

8 § 2. Section 7 of the transportation corporations law, as added by  
9 section 2 of part RRR of chapter 59 of the laws of 2019, is amended to  
10 read as follows:

11 § 7. Agreement for fiber optic utility use and occupancy of state  
12 right of way. The commissioner of transportation is hereby authorized to  
13 enter into an agreement with any fiber optic utility for use and occu-  
14 pancy of the state right of way for the purposes of installing, modify-  
15 ing, relocating, repairing, operating, or maintaining fiber optic facil-  
16 ities. Such agreement may include a fee for use and occupancy of the  
17 right of way, provided, however, such fee shall not be greater than fair  
18 market value. Any provider using or occupying a right of way in fulfill-  
19 ment of a state grant award through the New NY Broadband Program shall  
20 not be subject to a fee for such use or occupancy. Any provider that is  
21 owned and operated by a municipality, or is owned and operated by a  
22 domestic corporation as such term is defined in subparagraph five of  
23 paragraph (a) of section one hundred two of the not-for-profit corpo-  
24 ration law and possessing a federal tax exemption pursuant to paragraph  
25 (3) of subsection (c) of section 501 of the federal internal revenue  
26 code (26 United States Code Section 510(c)(3)) shall not be subject to a  
27 fee for such use or occupancy. Any fee for use or occupancy charged to a  
28 fiber optic utility shall not be passed through in whole or in part as a  
29 fee, charge, increased service cost, or by any other means by a fiber  
30 optic utility to any person or entity that contracts with such fiber  
31 optic utility for service. Any compensation received by the state pursu-  
32 ant to such agreement shall be deposited by the comptroller into the  
33 special obligation reserve and payment account of the dedicated highway  
34 and bridge trust fund established pursuant to section eighty-nine-b of  
35 the state finance law. Nothing herein shall impair, inhibit, or other-  
36 wise affect the ability of any municipality to regulate zoning, land  
37 use, or any other power or authority granted under the law. For purposes  
38 of this section, "municipality" shall include a county, city, village,  
39 or town.

40 § 3. This act shall take effect immediately; provided, however, that  
41 the amendments to subdivision 24-e of section 10 of the highway law made  
42 by section one of this act shall not affect the repeal of such subdivi-  
43 sion and shall be deemed to expire and repeal therewith; and provided,  
44 further, that the amendments to section 7 of the transportation corpo-  
45 rations law made by section two of this act shall not affect the repeal  
46 of such section and shall be deemed to expire and repeal therewith.