

STATE OF NEW YORK

6288--B

2021-2022 Regular Sessions

IN SENATE

April 20, 2021

Introduced by Sen. MANNION -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Transportation in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 Assembly, 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; furthermore, the development authority of the

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

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1 north country, as defined by title twenty-nine of article eight of the
2 public authorities law, shall not be subject to a fee for such use or
3 occupancy. Any fee for use or occupancy charged to a fiber optic utility
4 shall not be passed through in whole or in part as a fee, charge,
5 increased service cost, or by any other means by a fiber optic utility
6 to any person or entity that contracts with such fiber optic utility for
7 service. Any compensation received by the state pursuant to such agree-
8 ment shall be deposited by the comptroller into the special obligation
9 reserve and payment account of the dedicated highway and bridge trust
10 fund established pursuant to section eighty-nine-b of the state finance
11 law. Nothing herein shall impair, inhibit, or otherwise affect the abil-
12 ity of any municipality to regulate zoning, land use, or any other power
13 or authority granted under the law. For purposes of this subdivision,
14 "municipality" shall include a county, city, village, or town.

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

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

49 § 3. This act shall take effect on the first of April next succeeding
50 the date on which it shall have become a law; provided, however, that
51 the amendments to subdivision 24-e of section 10 of the highway law made
52 by section one of this act shall not affect the repeal of such subdivi-
53 sion and shall be deemed to expire and repeal therewith; and provided,
54 further, that the amendments to section 7 of the transportation corpo-
55 rations law made by section two of this act shall not affect the repeal
56 of such section and shall be deemed to expire and repeal therewith.