

# STATE OF NEW YORK

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7494

2021-2022 Regular Sessions

## IN SENATE

October 29, 2021

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Introduced by Sen. HINCHEY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the highway law and the transportation corporations law, in relation to prohibiting fees for the use and occupancy of the state right of way in certain agreements

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 section 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~~] shall not include [~~a~~] any fee for use and occupancy  
9 of the right of way[~~, provided, however, such fee shall not be greater~~  
10 ~~than fair market value. Any provider using or occupying a right of way~~  
11 ~~in fulfillment of a state grant award through the New NY Broadband~~  
12 ~~Program shall not be subject to a fee for such use or occupancy. Any fee~~  
13 ~~for use or occupancy charged to a fiber optic utility shall not be~~  
14 ~~passed through in whole or in part as a fee, charge, increased service~~  
15 ~~cost, or by any other means by a fiber optic utility to any person or~~  
16 ~~entity that contracts with such fiber optic utility for service]. Any~~  
17 compensation received by the state pursuant to such agreement shall be  
18 deposited by the comptroller into the special obligation reserve and  
19 payment account of the dedicated highway and bridge trust fund estab-  
20 lished pursuant to section eighty-nine-b of the state finance law. Noth-  
21 ing herein shall impair, inhibit, or otherwise affect the ability of any  
22 municipality to regulate zoning, land use, or any other power or author-  
23 ity granted under the law. For purposes of this subdivision, "municipi-  
24 pality" shall include a county, city, village, or town.

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

LBD13118-01-1

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

4     § 7. Agreement for fiber optic utility use and occupancy of state  
5     right of way. The commissioner of transportation is hereby authorized to  
6     enter into an agreement with any fiber optic utility for use and occu-  
7     pancy of the state right of way for the purposes of installing, modify-  
8     ing, relocating, repairing, operating, or maintaining fiber optic facil-  
9     ities. Such agreement ~~[may]~~ shall not include ~~[a]~~ any fee for use and  
10    occupancy of the right of way~~[, provided, however, such fee shall not be~~  
11   ~~greater than fair market value. Any provider using or occupying a right~~  
12   ~~of way in fulfillment of a state grant award through the New NY Broad-~~  
13   ~~band Program shall not be subject to a fee for such use or occupancy.~~  
14   ~~Any fee for use or occupancy charged to a fiber optic utility shall not~~  
15   ~~be passed through in whole or in part as a fee, charge, increased~~  
16   ~~service cost, or by any other means by a fiber optic utility to any~~  
17   ~~person or entity that contracts with such fiber optic utility for~~  
18   ~~service].~~ Any compensation received by the state pursuant to such agree-  
19    ment shall be deposited by the comptroller into the special obligation  
20    reserve and payment account of the dedicated highway and bridge trust  
21    fund established pursuant to section eighty-nine-b of the state finance  
22    law. Nothing herein shall impair, inhibit, or otherwise affect the abil-  
23    ity of any municipality to regulate zoning, land use, or any other power  
24    or authority granted under the law. For purposes of this section, "muni-  
25    cipality" shall include a county, city, village, or town.

26    § 3. Notwithstanding any provision of law to the contrary, any  
27    provision of an agreement made pursuant to subdivision 24-e of section  
28    10 of the highway law or section 7 of the transportation corporations  
29    law that provide for a fee for use and occupancy of a right of way shall  
30    be deemed unenforceable, provided however, that the remaining provisions  
31    of such agreement shall be enforceable. Any fees for use and occupancy  
32    of a right of way collected prior to the effective date of this act  
33    pursuant to such an agreement, may be retained by the state.

34    § 4. This act shall take effect immediately, provided, however that  
35    the amendments to subdivision 24-e of section 10 of the highway law made  
36    by section one of this act and the amendments to section 7 of the trans-  
37    portation corporations law made by section two of this act shall not  
38    affect the expiration of such subdivision and such section and shall be  
39    deemed to expire and repeal therewith.