S T A T E O F N E W Y O R K

7816

I N S E N A T E

May 12, 2016

Introduced by Sen. BOYLE -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general municipal law and the highway law, in relation to the solicitation of bids for the installation of fiber optic cable ducts

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The general municipal law is amended by adding a new article 5-M to read as follows:

ARTICLE 5-M

FIBER OPTIC CABLE DUCT INSTALLATION; SOLICITATION OF BIDS

SECTION 119-MM. FIBER OPTIC CABLE DUCT INSTALLATION.

S 119-MM. FIBER OPTIC CABLE DUCT INSTALLATION. 1. (A) WHEN A MUNICIPALITY, ACTING ALONE OR AS PART OF A JOINT WATER, SEWAGE OR DRAINAGE PROJECT, INSTALLS, REPAIRS AND/OR REPLACES SEWER LINES AND/OR WATER LINES, THE SOLICITATION OF BIDS FOR THE CONTEMPORANEOUS INSTALLATION OF FIBER OPTIC CABLE DUCTS ALONG THAT PORTION OF ROAD REQUIRING EXCAVATION FOR SUCH PROJECT SHALL BE REQUIRED AND SUCH MUNICIPALITY OR MUNICIPALITIES ACTING JOINTLY MAY AWARD A CONTRACT THEREFOR.

(B) WHEN A MUNICIPALITY, ACTING ALONE OR AS PART OF A MUNICIPAL COOPERATION AGREEMENT, INSTALLS, REPAIRS AND/OR REPLACES GAS, STEAM, ELECTRIC AND/OR TELECOMMUNICATIONS LINES, THE SOLICITATION OF BIDS FOR THE CONTEMPORANEOUS INSTALLATION OF FIBER OPTIC CABLE DUCTS ALONG THAT PORTION OF ROAD REQUIRING EXCAVATION FOR SUCH PROJECT SHALL BE REQUIRED AND SUCH MUNICIPALITY OR MUNICIPALITIES ACTING JOINTLY MAY AWARD A CONTRACT THEREFOR.

2. FOR THE PURPOSES OF THIS SECTION:

(A) "MUNICIPALITY" SHALL MEAN ANY COUNTY, CITY, TOWN OR VILLAGE, OR COUNTY ON BEHALF OF A COUNTY WATER, SEWAGE OR DRAINAGE DISTRICT.

(B) "FIBER OPTIC CABLE DUCT" SHALL MEAN A CONDUIT THROUGH WHICH FIBER OPTIC CABLES ARE PULLED.

S 2. Section 38 of the highway law is amended by adding a new subdivision 10 to read as follows:

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

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10. EVERY CONTRACT ENTERED INTO PURSUANT TO THE PROVISIONS OF THIS SECTION SHALL INCLUDE A PROVISION PROVIDING FOR THE INSTALLATION OF FIBER OPTIC CABLE DUCTS ALONG THE HIGHWAYS OR SECTIONS THEREOF THAT ARE THE SUBJECT OF SUCH CONTRACT.

S 3. Section 40 of the highway law, as amended by chapter 1110 of the laws of 1971, is amended to read as follows:

S 40. Authority of commissioner of transportation with respect to the performance of contracts for construction, reconstruction or improvement of state highways, highway projects under the supervision of the department of transportation, bridges, grade crossing eliminations, FIBER OPTIC CABLE DUCT INSTALLATION and stream channel improvements; completion of work by surety; cancellation of contract by commissioner of transportation.

The performance of every contract for the construction, reconstruction or improvement of a state highway, bridge, grade crossing elimination, FIBER OPTIC CABLE DUCT INSTALLATION or stream channel improvement shall be under the supervision and control of the commissioner of transportation, and it shall be his duty to see that every such contract is performed in accordance with the provisions of the contract and with the plans and specifications forming a part thereof. If the commissioner of transportation shall determine that the work upon any contract for the construction, improvement, maintenance, repair or reconstruction, of a state highway, other highway under the supervision of the department of transportation, bridge, grade crossing elimination, FIBER OPTIC CABLE DUCT INSTALLATION or stream channel improvement, is not being performed according to the contract or for the best interest of the state, the execution of the work by the contractor may be temporarily suspended by the commissioner of transportation, who may then proceed with the work under his own direction in such manner as will accord with the contract specifications and be for the best interests of the state; or he may terminate the contractor's employment under the contract while it is in progress, and thereupon, proceed with the work, in affirmance of the contract, by contract negotiated or publicly let, by the use of his own forces, by calling upon the surety to complete the work in accordance with the plans and specifications or by a combination of any such methods; or he may cancel the contract and either readvertise and relet as provided in section thirty-eight of this [chapter] ARTICLE, or complete the work under his own direction in such manner as will accord with the contract specifications and be for the best interests of the state. Any excess in the cost of completing the contract beyond the price for which it was originally awarded shall be charged to and paid by the contractor failing to perform the work or his surety. Where the estimate for the completion of a cancelled contract or defaulted contract, or a contract being completed pursuant to the provisions of this section, is in excess of the balance of the amount originally set aside by the state to provide for the construction, reconstruction, improvement, maintenance or repair of such highway, or other construction project, together with any amount appropriated by the county, town or village for such improvement, the commissioner of transportation is authorized to set aside from any funds available for the construction or reconstruction of state highways, highway projects under the supervision of the department of transportation, bridges, grade crossing eliminations, FIBER OPTIC CABLE DUCT INSTALLATION and stream channel improvements, an additional sum equal to such excess including the proportionate share of the county, town or village; and to pay such excess in the first instance, including the share of the county, town or village, pending recovery of excess

cost from the defaulting contractor or his surety, as provided in this section. In the event that the state fails to recover from the defaulting contractor or surety the excess cost in completing the contract over the amount for which it was originally awarded, the county, town, or village shall pay to the state upon the demand of the commissioner of transportation the same proportion of such excess cost as was originally appropriated by the county, town or village, for the improvement, and the board of supervisors, town board or village trustees shall be subject to mandamus proceedings by the attorney general to enforce the payment of the share of the county, town or village of such excess cost. Every contract for the construction, improvement, maintenance, repair or reconstruction of a state highway, highway project under the supervision of the department of transportation, bridge, FIBER OPTIC CABLE DUCT INSTALLATION, grade crossing elimination or stream channel improvement, shall reserve to the commissioner of transportation the right to suspend or cancel the contract as above provided, and to complete the work thereunder by contract negotiated or publicly let or by the use of his own forces, or affirm the contract and thereupon to complete the work thereunder according to any of the methods above provided as the commissioner of transportation may determine.

S 4. This act shall take effect immediately.