

# STATE OF NEW YORK

10985

## IN ASSEMBLY

September 9, 2020

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Blankenbush)  
-- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the highway law and the transportation corporations law, in relation to fees associated with agreements between municipalities and fiber optic utility companies

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~~] shall not include a fee for use and occupancy of  
9 the right of way[, ~~provided, however, such fee shall not be greater than~~  
10 ~~fair market value. Any provider using or occupying a right of way in~~  
11 ~~fulfillment of a state grant award through the New NY Broadband Program~~  
12 ~~shall not be subject to a fee for such use or occupancy. Any fee for use~~  
13 ~~or occupancy charged to a fiber optic utility shall not be passed~~  
14 ~~through in whole or in part as a fee, charge, increased service cost, or~~  
15 ~~by any other means by a fiber optic utility to any person or entity that~~  
16 ~~contracts with such fiber optic utility for service. Any compensation~~  
17 ~~received by the state pursuant to such agreement shall be deposited by~~  
18 ~~the comptroller into the special obligation reserve and payment account~~  
19 ~~of the dedicated highway and bridge trust fund established pursuant to~~  
20 ~~section eighty-nine-b of the state finance law~~]. Nothing herein shall  
21 impair, inhibit, or otherwise affect the ability of any municipality to  
22 regulate zoning, land use, or any other power or authority granted under  
23 the law. For purposes of this subdivision, "municipality" shall include  
24 a county, city, village, or town.

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

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1 § 2. Section 7 of the transportation corporations law, as added by  
2 section 2 of part RRR of chapter 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 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  
23 ability of any municipality to regulate zoning, land use, or any other  
24 power or authority granted under the law. For purposes of this section,  
25 "municipality" shall include a county, city, village, or town.

26 § 3. This act shall take effect immediately, provided, however, that  
27 the amendments to subdivision 24-e of section 10 of the highway law made  
28 by section one and the amendments to section 7 of the transportation  
29 corporations law made by section two of this act shall not affect the  
30 repeal of such provisions and shall be deemed repealed therewith.