STATE OF NEW YORK

9003

IN SENATE

September 25, 2020

Introduced by Sen. ORTT -- 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 fees for the use and occupancy of the state right of way by fiber optic utilities; directing the department of transportation to study the cost of administering utility projects in state highway rights of way; and providing for the repeal of certain provisions upon the expiration thereof

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

Section 1. The department of transportation is authorized and directed to study the cost to the department of transportation to administer utility projects in the state highway rights of way. Such study shall separately review, but not be limited to, water, gas, electric, and fiber optic projects.

§ 2. On or before April 1, 2021, the commissioner of transportation shall deliver a copy of the findings of the study conducted pursuant to section one of this act to the governor, the temporary president of the senate, the speaker of the assembly, the minority leader of the senate, and the minority leader of the assembly.

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

24-e. The commissioner of transportation is hereby authorized to enter into an agreement with any fiber optic utility for use and occupancy of the state right of way for the purposes of installing, modifying, relocating, repairing, operating, or maintaining fiber optic facilities. Such agreement may include a fee for use and occupancy of the right of way[~~, provided, however, such fee shall not be greater than fair market value~~]. Any provider using or occupying a right of way in fulfillment of a state grant award through the New NY Broadband Program shall not be subject to a fee for such use or occupancy. Any fee for use or occupancy charged to a fiber optic utility shall not be passed through in whole or in part as a fee, charge, increased service cost, or by any other means

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

LBD17363-01-0

by a fiber optic utility to any person or entity that contracts with such fiber optic utility for service. **Any such fees shall in total not exceed the cost to the department of transportation to administer fiber optic projects in the state right of way.** Any compensation received by the state pursuant to such agreement shall be deposited by the comptroller into the special obligation reserve and payment account of the dedicated highway and bridge trust fund established pursuant to section eighty-nine-b of the state finance law. Nothing herein shall impair, inhibit, or otherwise affect the ability of any municipality to regulate zoning, land use, or any other power or authority granted under the law. For purposes of this subdivision, "municipality" shall include a county, city, village, or town.

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

§ 7. Agreement for fiber optic utility use and occupancy of state right of way. The commissioner of transportation is hereby authorized to enter into an agreement with any fiber optic utility for use and occupancy of the state right of way for the purposes of installing, modifying, relocating, repairing, operating, or maintaining fiber optic facilities. Such agreement may include a fee for use and occupancy of the right of way[~~, provided, however, such fee shall not be greater than fair market value~~]. Any provider using or occupying a right of way in fulfillment of a state grant award through the New NY Broadband Program shall not be subject to a fee for such use or occupancy. Any fee for use or occupancy charged to a fiber optic utility shall not be passed through in whole or in part as a fee, charge, increased service cost, or by any other means by a fiber optic utility to any person or entity that contracts with such fiber optic utility for service. **Any such fees shall in total not exceed the cost to the department of transportation to administer fiber optic projects in the state right of way.** Any compensation received by the state pursuant to such agreement shall be deposited by the comptroller into the special obligation reserve and payment account of the dedicated highway and bridge trust fund established pursuant to section eighty-nine-b of the state finance law. Nothing herein shall impair, inhibit, or otherwise affect the ability of any municipality to regulate zoning, land use, or any other power or authority granted under the law. For purposes of this section, "municipality" shall include a county, city, village, or town.

§ 5. This act shall take effect immediately, provided, however, that the amendments to subdivision 24-e of section 10 of the highway law made by section three of this act and the amendments to section 7 of the transportation corporations law made by section four of this act shall not affect the expiration of such subdivision and such section and shall be deemed to expire therewith; provided, further, that sections one and two of this act shall expire and be deemed repealed on the thirtieth day following the delivery of the report to the governor and the legislature as provided for in section two of this act; provided that the commissioner of transportation shall notify the legislative bill drafting commission upon the occurrence of the delivery of such report to the governor and the legislature in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law.