

STATE OF NEW YORK

6538

2021-2022 Regular Sessions

IN ASSEMBLY

March 19, 2021

Introduced by M. of A. MAGNARELLI -- read once and referred to the
Committee on Transportation

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 Assem-
bly, 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. Any fee for use or occupancy charged to a fiber
20 optic utility shall not be passed through in whole or in part as a fee,
21 charge, increased service cost, or by any other means by a fiber optic
22 utility to any person or entity that contracts with such fiber optic
23 utility for service. Any compensation received by the state pursuant to
24 such agreement shall be deposited by the comptroller into the special

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

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1 obligation reserve and payment account of the dedicated highway and
2 bridge trust fund established pursuant to section eighty-nine-b of the
3 state finance law. Nothing herein shall impair, inhibit, or otherwise
4 affect the ability of any municipality to regulate zoning, land use, or
5 any other power or authority granted under the law. For purposes of
6 this subdivision, "municipality" shall include a county, city, village,
7 or town.

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

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

40 § 3. This act shall take effect immediately; provided, however, that
41 the amendments to subdivision 24-e of section 10 of the highway law made
42 by section one of this act shall not affect the repeal of such subdivi-
43 sion and shall be deemed to expire and repeal therewith; and provided,
44 further, that the amendments to section 7 of the transportation corpo-
45 rations law made by section two of this act shall not affect the repeal
46 of such section and shall be deemed to expire and repeal therewith.