

# STATE OF NEW YORK

3720

2021-2022 Regular Sessions

## IN SENATE

January 30, 2021

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

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:

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

6 § 2. On or before April 1, 2022, the commissioner of transportation  
7 shall deliver a copy of the findings of the study conducted pursuant to  
8 section one of this act to the governor, the temporary president of the  
9 senate, the speaker of the assembly, the minority leader of the senate,  
10 and the minority leader of the assembly.

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

14 24-e. The commissioner of transportation is hereby authorized to enter  
15 into an agreement with any fiber optic utility for use and occupancy of  
16 the state right of way for the purposes of installing, modifying, relo-  
17 cating, repairing, operating, or maintaining fiber optic facilities.  
18 Such agreement may include a fee for use and occupancy of the right of  
19 way~~[, provided, however, such fee shall not be greater than fair market~~  
20 ~~value]~~. Any provider using or occupying a right of way in fulfillment of  
21 a state grant award through the New NY Broadband Program shall not be  
22 subject to a fee for such use or occupancy. Any fee for use or occupancy  
23 charged to a fiber optic utility shall not be passed through in whole or  
24 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.

LBD08033-01-1

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

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

16 § 7. Agreement for fiber optic utility use and occupancy of state  
17 right of way. The commissioner of transportation is hereby authorized to  
18 enter into an agreement with any fiber optic utility for use and occu-  
19 pancy of the state right of way for the purposes of installing, modify-  
20 ing, relocating, repairing, operating, or maintaining fiber optic facil-  
21 ities. Such agreement may include a fee for use and occupancy of the  
22 right of way[~~, provided, however, such fee shall not be greater than~~  
23 ~~fair market value~~]. Any provider using or occupying a right of way in  
24 fulfillment of a state grant award through the New NY Broadband Program  
25 shall not be subject to a fee for such use or occupancy. Any fee for use  
26 or occupancy charged to a fiber optic utility shall not be passed  
27 through in whole or in part as a fee, charge, increased service cost, or  
28 by any other means by a fiber optic utility to any person or entity that  
29 contracts with such fiber optic utility for service. Any such fees shall  
30 in total not exceed the cost to the department of transportation to  
31 administer fiber optic projects in the state right of way. Any compen-  
32 sation received by the state pursuant to such agreement shall be depos-  
33 ited by the comptroller into the special obligation reserve and payment  
34 account of the dedicated highway and bridge trust fund established  
35 pursuant to section eighty-nine-b of the state finance law. Nothing  
36 herein shall impair, inhibit, or otherwise affect the ability of any  
37 municipality to regulate zoning, land use, or any other power or author-  
38 ity granted under the law. For purposes of this section, "municipality"  
39 shall include a county, city, village, or town.

40 § 5. 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 three of this act and the amendments to section 7 of the  
43 transportation corporations law made by section four of this act shall  
44 not affect the expiration of such subdivision and such section and shall  
45 be deemed to expire therewith; provided, further, that sections one and  
46 two of this act shall expire and be deemed repealed on the thirtieth day  
47 following the delivery of the report to the governor and the legislature  
48 as provided for in section two of this act; provided that the commis-  
49 sioner of transportation shall notify the legislative bill drafting  
50 commission upon the occurrence of the delivery of such report to the  
51 governor and the legislature in order that the commission may maintain  
52 an accurate and timely effective data base of the official text of the  
53 laws of the state of New York in furtherance of effectuating the  
54 provisions of section 44 of the legislative law and section 70-b of the  
55 public officers law.