

# STATE OF NEW YORK

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6538--B

Cal. No. 218

2021-2022 Regular Sessions

## IN ASSEMBLY

March 19, 2021

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Introduced by M. of A. MAGNARELLI, BARRETT, ENGLEBRIGHT, ZINERMAN, THIELE, SIMON, LAVINE, LUPARDO, KELLES, WALLACE, SILLITTI, OTIS -- read once and referred to the Committee on Transportation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- ordered to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

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 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 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; furthermore, the development authority of the  
20 north country, as defined by title twenty-nine of article eight of the

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

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1 public authorities law, shall not be subject to a fee for such use or  
2 occupancy. Any fee for use or occupancy charged to a fiber optic utility  
3 shall not be passed through in whole or in part as a fee, charge,  
4 increased service cost, or by any other means by a fiber optic utility  
5 to any person or entity that contracts with such fiber optic utility for  
6 service. Any compensation received by the state pursuant to such agree-  
7 ment shall be deposited by the comptroller into the special obligation  
8 reserve and payment account of the dedicated highway and bridge trust  
9 fund established pursuant to section eighty-nine-b of the state finance  
10 law. Nothing herein shall impair, inhibit, or otherwise affect the abil-  
11 ity of any municipality to regulate zoning, land use, or any other power  
12 or authority granted under the law. For purposes of this subdivision,  
13 "municipality" shall include a county, city, village, or town.

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

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

48 § 3. This act shall take effect on the first of April next succeeding  
49 the date on which it shall have become a law; provided, however, that  
50 the amendments to subdivision 24-e of section 10 of the highway law made  
51 by section one of this act shall not affect the repeal of such subdivi-  
52 sion and shall be deemed to expire and repeal therewith; and provided,  
53 further, that the amendments to section 7 of the transportation corpo-  
54 rations law made by section two of this act shall not affect the repeal  
55 of such section and shall be deemed to expire and repeal therewith.