STATE OF NEW YORK

8287

2021-2022 Regular Sessions

IN ASSEMBLY

October 1, 2021

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

AN ACT to amend the highway law and the transportation corporations law, in relation to prohibiting fees for the use and occupancy of the state right of way in certain agreements

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

Section 1. Subdivision 24-e of section 10 of the highway law, as added by section 1 of part RRR of section 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~~] **shall not** include [~~a~~] **any** 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 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.

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

LBD13118-01-1

§ 2. Section 7 of the transportation corporations law, as added by section 2 of part RRR of section 59 of the laws 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~~] **shall not** include [~~a~~] **any** 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 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.

§ 3. Notwithstanding any provision of law to the contrary, any provision of an agreement made pursuant to subdivision 24-e of section 10 of the highway law or section 7 of the transportation corporations law that provide for a fee for use and occupancy of a right of way shall be deemed unenforceable, provided however, that the remaining provisions of such agreement shall be enforceable. Any fees for use and occupancy of a right of way collected prior to the effective date of this act pursuant to such an agreement, may be retained by the state.

§ 4. 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 one of this act and the amendments to section 7 of the transportation corporations law made by section two of this act shall not affect the expiration of such subdivision and such section and shall be deemed to expire and repeal therewith.