STATE OF NEW YORK

3910

2021-2022 Regular Sessions

IN SENATE

February 1, 2021

Introduced by Sen. KENNEDY -- 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 agreements for fiber optic use and occupancy of state right of way; and providing for the repeal of certain provisions upon expiration thereof

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 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~~] **all entities** 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 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~~

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

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~~the law. For purposes of this subdivision, "municipality" shall include a county, city, village, or town.~~]

§ 2. Section 7 of the transportation corporations law, as added by section 2 of part RRR of chapter 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~~] shall enter into an agreement with [~~any fiber optic utility~~] all entities 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 include a fee for use and occupancy of the state right of way, provided, however, such fee shall [~~not be greater than fair market value~~] be based on the department of transportation's cost of managing the state right of way and assessed annually to all entities occupying the state right of way. 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~~] Such 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.

§ 3. The transportation corporations law is amended by adding a new section 8 to read as follows:

§ 8. Assessment of annual fee for use and occupancy of the state right of way. 1. The commissioner of transportation is authorized to assess an annual fee to all entities occupying the state right of way on a pro-rata basis of the total linear length of fiber facilities owned by the entities as of March thirty-first of each year.

2. The department of transportation shall develop a standardized form, which at a minimum shall require from each entity the total linear feet of state right of way occupancy, without regard to the number of fiber strands or cables an entity has deployed in the state right of way. The total linear feet shall include both aerial and underground facilities occupying the state right of way as of March thirty-first of each year. Such standardized form shall include a certification and attestation to the true and accurate nature of the entity's reported total linear feet and each entity shall submit said form no later than May first of each year.

3. The annual fee shall be assessed to all entities occupying the state right of way on a pro-rata basis on or before June thirtieth annually. Provided, however that any fees collected pursuant to subdivision twenty-four-e of section ten of the highway law shall be applied. All fees and security deposits remitted to the department of transportation

by an entity between October first, two thousand twenty and March thirty-first, two thousand twenty-one shall be applied toward that entity's first year pro-rata payment. All fees and security deposits remitted to the department of transportation from April first, two thousand twenty-one and March thirty-first, two thousand twenty-two shall be applied toward that entity's second year pro-rata payment. In the event that the entity's payments made in any year exceed the calculated pro-rata share for that entity, the excess fees and security deposits shall be applied to the subsequent years' pro-rata payments as appropriate.

4. Notwithstanding any other law or provision to the contrary, such total annual fee collected by the department of transportation pursuant to this section for fiber optic use and occupancy of the state right of way shall not exceed: fifteen million dollars for state fiscal year two thousand twenty-one; thirty million dollars for state fiscal year two thousand twenty-two; fifty million dollars for state fiscal years two thousand twenty-three through two thousand twenty-four and shall be paid on a pro-rata basis by all entities occupying the state right of way.

5. Notwithstanding any other law or provision to the contrary the department of transportation is authorized to contract with an independent consultant to determine and assess the annual fee for use and occupancy of the state right of way.

§ 4. This act shall take effect immediately; provided, however, that section 8 of the transportation corporations law as added by section three of this act shall be deemed repealed on the same date and same manner as part RRR of chapter 59 of the laws of 2019, as amended; provided, further, 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 repeal of such subdivision and such section and shall be deemed repealed therewith.