

Rent for Leasing or Licensing State-Owned Property under the Agency's Jurisdiction

Maria Royle, Legislative Counsel, February 6, 2024

Statutory Requirements - [19 V.S.A. § 26a](#)

- Enacted in 1997
- State owned, managed, or controlled ROW
- Ordinarily requires the payment of FMV rent (as determined by the prevailing area market prices for comparable space or property)
- Agency may lease for less than FMV when Agency determines:
 - proposed occupancy or use serves a public purpose; or
 - justified by other relevant factors such as prior course of dealing between the parties
- 2007 – new provision applicable to broadband and wireless communications facilities or services
 - Agency required to collect reasonable charge or payment for State-owned ROW
 - Deposited in T-Fund
 - Agency may waive charge in whole or in part if:
 - Agency and Department of Public Service determine that:
 - Provider offers “comparable value” to State to meet public good
 - Comparable value = FMV
 - Construed broadly to further State’s interest in ubiquitous broadband and wireless availability at “reasonable cost”
 - Waiver may not exceed 5 years
 - May be extended up to 5 years if Agency makes affirmative written findings demonstrating that:
 - State has received and will continue to receive value that is comparable to the value to the provider, or may revise terms in order to do so
- Fees never collected from broadband and wireless providers
 - [State Auditor Memo, May 31, 2022](#)

Federal Law – ROW fee must be “fair and reasonable” (§ 253 – removal of barriers to entry)

- A reasonable approximation of the cost that is itself objectively reasonable (administration and maintenance)
- FCC Small Cell Order (2018) – presumptively reasonable fee
 - \$270 per small cell per year for all recurring fees
- No duplicative ROW fees
 - 2020 FCC Ruling – dark fiber owner and user of such fiber cannot both be charged for use of ROW

Other Fees (for context)

- Agency collects a State highway access and work permit (19 V.S.A. § 1111)
 - \$100 for utility installations
 - \$500 for annual utility permits (routine maintenance and emergency repair permits)
- Cable TV providers pay 5% gross (tv) revenue fee (\$6-7M; does not include voice/broadband revenue)
- Town highway fees (19 VSA chapter 3)
- Wireless telecommunications facilities on State-owned buildings, structures and lan (30 V.S.A. § 227b)
 - Secretary of Administration
- State-owned mountaintop use as communications sites (10 V.S.A. § 2606a)
- ANR license and special use permit fees for uses of State land
 - Utility Right of Way. \$50 Base Fee plus \$1.00/l.f. for Electric Distribution Lines and Telephone Lines; \$2.00/l.f. for Fiber Optic Cable Lines and Transmission Lines; \$3.00/l.f. for Pipelines. Minimum fee of \$500 for electric distribution and telephone lines and incidental supporting infrastructure on ANR land

such as guy wire(s), etc. \$1000 minimum fee for fiber optic lines, transmission lines and pipelines. Fees may be reduced or waived if the utility line services an ANR facility. \$1500 for utility cabinet sites (up to 20 feet by 20 feet). License fees are for 10 year terms. For utility projects whose scope and scale have the potential to significantly impact Agency land, the department controlling the land in its discretion may decide to issue a long-term lease for a negotiated fee or to convey a permanent easement based on appraised value

- Land use permits (Act 250; local planning/zoning permits; 248a CPG)