

REFERENCE TITLE: **ADOT; telecommunication facilities installation**

State of Arizona
House of Representatives
Fifty-fifth Legislature
First Regular Session
2021

HB 2596

Introduced by
Representative Cobb

AN ACT

**AMENDING SECTIONS 28-7048, 28-7381 AND 28-7382, ARIZONA REVISED STATUTES;
AMENDING TITLE 28, CHAPTER 20, ARTICLE 14, ARIZONA REVISED STATUTES, BY
ADDING SECTIONS 28-7383, 28-7384, 28-7385, 28-7386 AND 28-7387; RELATING
TO THE DEPARTMENT OF TRANSPORTATION.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 28-7048, Arizona Revised Statutes, is amended to
3 read:

4 28-7048. Lease of areas above and below highways; exceptions

5 A. The director may lease to any public agency, as defined in
6 section 11-951, or to a private person or entity the use of areas above or
7 below state highways, subject to reservations, restrictions and conditions
8 the director deems necessary to assure adequate protection of the safety
9 and integrity of highway facilities and to secure the safety of
10 motorists. Before entering into the lease, the director shall:

11 1. Determine that the proposed use by a lessee is not in conflict
12 with the zoning regulations of the local government concerned.

13 2. Make the lease pursuant to procedures prescribed by the board.

14 3. Make a lease with a private person or entity only after
15 competitive bidding.

16 B. The transportation board may reject any or all bids or call for
17 additional bids if in the opinion of the board the bids submitted are not
18 in the best interest of this state. The board shall not accept a bid that
19 does not yield at least a fair rental value for the property to the state
20 highway fund.

21 C. The department shall deposit, pursuant to sections 35-146 and
22 35-147, the revenues derived from the leases in the state highway fund.

23 D. The authority granted to the director by this section does not
24 include the right to lease public rights-of-way to public service
25 corporations, and this section does not affect any rights of public
26 service corporations to use public rights-of-way or to obtain permits or
27 easements associated with public uses of public rights-of-way.

28 E. THIS SECTION DOES NOT APPLY TO THE USE OF HIGHWAY RIGHTS-OF-WAY
29 FOR TELECOMMUNICATION FACILITY INSTALLATION PURSUANT TO ARTICLE 14 OF THIS
30 CHAPTER.

31 Sec. 2. Heading change

32 The article heading of title 28, chapter 20, article 14, Arizona
33 Revised Statutes, is changed from "BROADBAND CONDUIT INSTALLATION" to
34 "TELECOMMUNICATION FACILITY INSTALLATION".

35 Sec. 3. Section 28-7381, Arizona Revised Statutes, is amended to
36 read:

37 28-7381. Definitions

38 In this article, unless the context otherwise requires:

39 ~~1. "Broadband conduit" means a conduit, innerduct or microduct for~~
40 ~~fiber optic cables that support broadband and wireless facilities for~~
41 ~~broadband service.~~

42 ~~2.~~ 1. "Broadband service":

43 (a) Means providing access and transport to the internet, computer
44 processing, information storage or protocol conversion ~~at a rate of at~~

1 ~~least one megabit per second~~ in either the upstream or downstream
2 direction, as established by the federal communications commission.

3 (b) Does not include information content or service applications
4 provided over the access service or any intrastate service that was
5 subject to a tariff as of January 1, 2012.

6 ~~3. "Cost-based rate" means a lease rate that is only comprised of
7 direct and actual associated indirect costs of obtaining and maintaining
8 the associated right-of-way and broadband conduit and must be equitably
9 allocated among users of the associated right-of-way, broadband conduit
10 and innerduct or microduct.~~

11 ~~4. "Covered rural highway construction project" means a project to
12 construct a new rural highway or to construct or relocate an additional
13 lane or shoulder for an existing rural highway that is commenced after the
14 effective date of this section and that receives funding from state or
15 federal monies.~~

16 2. "LONGITUDINAL ACCESS" MEANS ACCESS TO OR USE OF ANY PART OF A
17 RIGHT-OF-WAY OF A HIGHWAY ON THE INTERSTATE SYSTEM THAT EXTENDS GENERALLY
18 PARALLEL TO THE RIGHT-OF-WAY FOR A TOTAL OF THIRTY OR MORE LINEAR METERS.

19 ~~5.~~ 3. "Provider" means an entity that provides for the sale or
20 resale of wholesale or retail broadband services in this state and that is
21 recognized as an eligible telecommunications carrier by the Arizona
22 corporation commission or that meets federal communications commission and
23 industry carrier class service guidelines or is a political subdivision
24 that has statutory authority to provide communications services.

25 ~~6. "Rural highway" means that portion of any highway in this state
26 that is either of the following:~~

27 ~~(a) Outside of the municipal boundary of any city or town having a
28 population of ten thousand persons or more.~~

29 ~~(b) Outside of federal metropolitan and micropolitan statistical
30 areas.~~

31 4. "TELECOMMUNICATION FACILITY" MEANS ANY TELECOMMUNICATION CABLE,
32 LINE, FIBER, WIRE, CONDUIT, INNERDUCT, ACCESS MANHOLE, HANDHOLE, TOWER,
33 HUT, PEDESTAL, POLE, BOX, TRANSMITTING EQUIPMENT, RECEIVING EQUIPMENT OR
34 POWER EQUIPMENT OR ANY OTHER EQUIPMENT, SYSTEM OR DEVICE THAT IS USED TO
35 TRANSMIT, RECEIVE, PRODUCE OR DISTRIBUTE BY WIRELESS, WIRELINE, ELECTRONIC
36 OR OPTICAL SIGNAL FOR COMMUNICATION PURPOSES.

37 Sec. 4. Section 28-7382, Arizona Revised Statutes, is amended to
38 read:

39 28-7382. Telecommunication facility installation; highway
40 construction projects; expanded use; action in
41 superior court; just compensation; excavation;
42 notice

43 A. The director, OR A PROVIDER WITH PERMISSION FROM THE DEPARTMENT,
44 may install ~~broadband conduit~~ TELECOMMUNICATION FACILITIES ~~in accordance~~
45 ~~with~~ PURSUANT TO this article ~~as part of a covered rural highway~~

1 ~~construction project if funding is received by the department to cover the~~
2 ~~cost.~~

3 B. ~~In carrying out this article,~~ The director may lease the
4 ~~broadband conduit~~ A TELECOMMUNICATION FACILITY to providers ~~at a cost-~~
5 ~~based rate~~ PURSUANT TO THIS ARTICLE and coordinate with providers
6 regarding planning ~~and~~ OR relocating of ~~broadband conduit~~ A
7 TELECOMMUNICATION FACILITY and any related provider TELECOMMUNICATION
8 facilities within the right-of-way at the provider's expense ~~if future~~
9 ~~highway improvements make the relocations necessary.~~ The director may
10 limit provider access to any ~~broadband~~ TELECOMMUNICATION facilities within
11 the right-of-way for initial installation and infrequent access for
12 maintenance purposes and may take other actions necessary to maintain
13 highway safety.

14 C. The director, OR A PROVIDER WITH PERMISSION FROM THE DEPARTMENT,
15 may install ~~broadband conduit~~ A TELECOMMUNICATION FACILITY without regard
16 to the timing of a related existing road construction project, ~~based on a~~
17 ~~request and receipt of funding from state entities charged with~~
18 ~~responsibility for broadband infrastructure and policy.~~

19 D. FOR THE PURPOSES OF INSTALLING AND OPERATING A TELECOMMUNICATION
20 FACILITY, IF THE DEPARTMENT, DIRECTLY OR THROUGH A PROVIDER, EXPANDS THE
21 USE OF AN EXISTING EASEMENT OR OTHER PROPERTY RIGHT THAT IS OWNED, HELD OR
22 USED BY THE DEPARTMENT FOR TRANSPORTATION PURPOSES AND THE EXPANDED USE
23 REDUCES THE FAIR MARKET VALUE OF THE PROPERTY OVER WHICH THE EASEMENT OR
24 OTHER PROPERTY RIGHT RUNS, THE PROPERTY OWNER IS ENTITLED TO JUST
25 COMPENSATION FROM THE DEPARTMENT OR PROVIDER.

26 E. THE PROPERTY OWNER MUST COMMENCE AN ACTION IN THE SUPERIOR COURT
27 FOR JUST COMPENSATION BASED ON DIMINUTION IN VALUE NOT LATER THAN EIGHTEEN
28 MONTHS AFTER THE DATE THE DEPARTMENT PROVIDES NOTICE TO THE PROPERTY OWNER
29 OF THE EXPANDED USE.

30 F. NOTICE UNDER SUBSECTION E OF THIS SECTION IS PROVIDED IF SENT BY
31 FIRST CLASS MAIL TO THE LAST KNOWN ADDRESS OF THE PROPERTY OWNER.

32 G. IN AN ACTION FOR JUST COMPENSATION BASED ON A CLAIM OF EXPANDED
33 USE FOR INSTALLATION OF A TELECOMMUNICATION FACILITY, ALL OF THE FOLLOWING
34 APPLY:

35 1. THE COURT OR JURY SHALL ASCERTAIN AND ASSESS THE DIMINUTION IN
36 VALUE OF THE PROPERTY BASED ON THE DIFFERENCE BETWEEN THE FAIR MARKET
37 VALUE OF THE ENTIRE PARCEL IMMEDIATELY BEFORE THE EXPANDED USE AND THE
38 FAIR MARKET VALUE OF THE ENTIRE PARCEL IMMEDIATELY AFTER THE EXPANDED USE.

39 2. EVIDENCE OF REVENUES OR PROFITS DERIVED FROM OR THE RENTAL VALUE
40 OF AN ASSEMBLED COMMUNICATIONS CORRIDOR ARE NOT ADMISSIBLE IN DETERMINING
41 FAIR MARKET VALUE.

42 3. ON PAYMENT OF JUST COMPENSATION, THE EXPANDED USE IS DEEMED
43 FULLY VESTED IN THE DEPARTMENT AND THE EXPANDED USE SHALL RUN WITH THE
44 LAND.

1 H. A CLASS ACTION MAY NOT BE MAINTAINED AGAINST THE DEPARTMENT OR
2 PROVIDER IN ANY ACTION FOR JUST COMPENSATION BASED ON A CLAIM OF EXPANDED
3 USE FOR THE INSTALLATION OF A TELECOMMUNICATION FACILITY.

4 I. ACTIONS FOR JUST COMPENSATION AS DESCRIBED IN THIS SECTION
5 INCLUDE TRESPASS, INVERSE CONDEMNATION AND OTHER SIMILAR CAUSES OF ACTION.

6 J. THIS SECTION DOES NOT PROHIBIT THE DEPARTMENT OR A PROVIDER FROM
7 REACHING AN AGREEMENT WITH A PROPERTY OWNER TO WAIVE A CLAIM FOR JUST
8 COMPENSATION RELATED TO EXPANDED USE FOR THE INSTALLATION OF A
9 TELECOMMUNICATION FACILITY OR FROM ACQUIRING THE RIGHT TO USE THE PROPERTY
10 BY OTHER LAWFUL MEANS.

11 K. IF EXCAVATION IS REQUIRED TO INSTALL FIBER OPTIC CABLE OR OTHER
12 UNDERGROUND TELECOMMUNICATION FACILITIES WITHIN AN EXISTING EASEMENT OR
13 OTHER PROPERTY RIGHT THAT IS OWNED, HELD OR USED BY THE DEPARTMENT FOR
14 TRANSPORTATION PURPOSES, A PROVIDER WITH PERMISSION FROM THE DEPARTMENT TO
15 INSTALL PRIVATELY OWNED TELECOMMUNICATION FACILITIES SHALL PROVIDE WRITTEN
16 NOTICE TO THE PROPERTY OWNER OF THE EXPANDED USE FOR INSTALLATION OF THE
17 TELECOMMUNICATION FACILITY BEFORE EXCAVATION. THE PROVIDER SHALL SEND THE
18 NOTICE BY FIRST CLASS MAIL TO THE LAST KNOWN ADDRESS OF THE PROPERTY
19 OWNER. A NOTICE SENT TO THE PROPERTY OWNER ENTITLED TO NOTICE UNDER THIS
20 SUBSECTION MUST INCLUDE ALL OF THE FOLLOWING:

21 1. THE NAME AND MAILING ADDRESS OF THE PROVIDER.

22 2. THE MAILING ADDRESS, TELEPHONE NUMBER AND EMAIL ADDRESS OF A
23 REPRESENTATIVE OF THE PROVIDER.

24 3. A SUMMARY STATEMENT DESCRIBING THE ACTIVITIES TO BE CONDUCTED
25 DURING THE EXCAVATION.

26 4. THE APPROXIMATE DATES WHEN THE EXCAVATION WILL START AND END.

27 L. THE NOTICE PRESCRIBED IN SUBSECTION K OF THIS SECTION IS NOT
28 REQUIRED BEFORE THE PROVIDER MAY USE AN EASEMENT OR OTHER PROPERTY RIGHT
29 THAT INCLUDES AN AUTHORIZATION FOR EXCAVATION FOR THE PURPOSES OF
30 INSTALLING A TELECOMMUNICATION FACILITY. FAILURE TO PROVIDE THE NOTICE
31 PRESCRIBED IN SUBSECTION K OF THIS SECTION:

32 1. PROHIBITS THE PROVIDER FROM PROCEEDING WITH AN EXCAVATION UNTIL
33 THE NOTICE IS PROVIDED.

34 2. DOES NOT INVALIDATE OR PREVENT THE DEPARTMENT FROM EXPANDING THE
35 USE OF THE EASEMENT OR PROPERTY RIGHT AS OTHERWISE DESCRIBED IN THIS
36 SECTION.

37 Sec. 5. Title 28, chapter 20, article 14, Arizona Revised Statutes,
38 is amended by adding sections 28-7383, 28-7384, 28-7385, 28-7386 and
39 28-7387, to read:

40 28-7383. Management of state-owned telecommunication
41 facilities

42 THE DEPARTMENT MAY ENTER INTO AN AGREEMENT WITH A PUBLIC OR PRIVATE
43 ENTITY FOR THE PURPOSE OF USING, MANAGING OR OPERATING STATE-OWNED
44 TELECOMMUNICATION FACILITIES AND COORDINATING ACTIVITIES IN THIS STATE
45 RELATING TO PLANNING, MAPPING AND PROCURING BROADBAND SERVICE.

1 8. SET AFTER THE DEPARTMENT CONDUCTS A MARKET ANALYSIS TO DETERMINE
2 THE FAIR AND REASONABLE VALUES OF THE RIGHT-OF-WAY.
3 9. A LUMP SUM PAYMENT OR ANNUAL INSTALLMENT, AT THE OPTION OF THE
4 PROVIDER.
5 10. SET PURSUANT TO SUBSECTION I OF THIS SECTION.
6 B. THE COMPENSATION MAY BE CASH, IN-KIND COMPENSATION OR A
7 COMBINATION OF CASH AND IN-KIND COMPENSATION.
8 C. IN-KIND COMPENSATION REQUIRES THE AGREEMENT OF BOTH THE PROVIDER
9 AND THE DEPARTMENT.
10 D. THE DEPARTMENT SHALL DETERMINE THE PRESENT VALUE OF ANY IN-KIND
11 COMPENSATION BASED ON THE INCREMENTAL COST TO THE PROVIDER.
12 E. THE VALUE OF IN-KIND COMPENSATION OR A COMBINATION OF CASH AND
13 IN-KIND COMPENSATION SHALL BE EQUAL TO OR GREATER THAN THE AMOUNT OF CASH
14 COMPENSATION THAT WOULD BE CHARGED IF THE COMPENSATION IS CASH ONLY.
15 F. THE DEPARTMENT SHALL PROVIDE FOR THE PROPORTIONATE SHARING OF
16 COSTS AMONG THE DEPARTMENT AND PROVIDERS FOR JOINT TRENCHING OR TRENCH
17 SHARING BASED ON THE AMOUNT OF CONDUIT INNERDUCT SPACE THAT IS AUTHORIZED
18 IN THE AGREEMENT FOR THE TRENCH.
19 G. IF TWO OR MORE PROVIDERS ARE REQUIRED TO SHARE A SINGLE TRENCH,
20 EACH PROVIDER IN THE TRENCH SHALL SHARE THE COST AND BENEFITS OF THE
21 TRENCH PURSUANT TO SUBSECTION F OF THIS SECTION ON A FAIR, REASONABLE,
22 COMPETITIVELY NEUTRAL AND NONDISCRIMINATORY BASIS.
23 H. THE DEPARTMENT SHALL CONDUCT THE MARKET ANALYSIS PRESCRIBED IN
24 SUBSECTION A, PARAGRAPH 8 OF THIS SECTION AT LEAST EVERY FIVE YEARS AND
25 SHALL APPLY ANY NECESSARY ADJUSTMENTS ONLY TO AGREEMENTS ENTERED AFTER THE
26 DATE OF THE NEW MARKET ANALYSIS.
27 I. THE DEPARTMENT, BY RULE, SHALL ESTABLISH A SCHEDULE OF RATES OF
28 COMPENSATION FOR ANY LONGITUDINAL ACCESS GRANTED UNDER THIS SECTION.
29 J. THE DEPARTMENT MAY NOT PAY ANY COST OF RELOCATION OF A PRIVATE
30 TELECOMMUNICATION FACILITY GRANTED LONGITUDINAL ACCESS TO THE RIGHT-OF-WAY
31 OF A HIGHWAY ON THE INTERSTATE SYSTEM UNDER THIS SECTION.
32 K. THE DEPARTMENT SHALL DEPOSIT, PURSUANT TO SECTIONS 35-146 AND
33 35-147, MONIES COLLECTED PURSUANT TO THIS SECTION IN THE SMART HIGHWAY
34 CORRIDOR TRUST FUND ESTABLISHED BY SECTION 28-7387.
35 L. ANY TELECOMMUNICATIONS CAPACITY ACQUIRED AS IN-KIND COMPENSATION
36 SHALL BE USED EXCLUSIVELY FOR THE FURTHER DEVELOPMENT OF
37 TELECOMMUNICATIONS THAT SERVE STATE AGENCIES AND ENHANCE CONNECTIVITY FOR
38 HIGHER AND PUBLIC EDUCATION AND MAY NOT BE SOLD OR LEASED IN COMPETITION
39 WITH TELECOMMUNICATION OR INTERNET SERVICE PROVIDERS.
40 M. A PERSON MAY NOT USE COMPENSATION PAID TO THE DEPARTMENT
41 PURSUANT TO THIS SECTION AS EVIDENCE OF THE MARKET OR OTHER VALUE OF THE
42 ACCESS FOR ANY OTHER PURPOSE, INCLUDING CONDEMNATION PROCEEDINGS, OTHER
43 LITIGATION, THE APPLICATION OF RATES OF TAXATION OR THE ESTABLISHMENT OF
44 FRANCHISE FEES RELATING TO LONGITUDINAL ACCESS RIGHTS.

1 28-7386. Use and access to state-owned conduit; compensation

2 A. THE DEPARTMENT MAY OFFER A PROVIDER USE OF AND ACCESS TO ITS
3 SPARE CONDUIT AND RELATED FACILITIES IF THE DEPARTMENT DOES ALL OF THE
4 FOLLOWING:

5 1. DETERMINES THE SPARE CONDUIT AND RELATED FACILITIES ARE NOT
6 NEEDED FOR HIGHWAY PURPOSES.

7 2. RECEIVES FAIR COMPENSATION FOR THE USE OF AND ACCESS TO THE
8 SPARE CONDUIT AND RELATED FACILITIES.

9 3. OFFERS SUCH USE AND ACCESS IN A COMPETITIVELY NEUTRAL AND
10 NONDISCRIMINATORY MANNER AS TO ALL SIMILARLY SITUATED PROVIDERS.

11 B. THE DEPARTMENT SHALL ESTABLISH RATES OF COMPENSATION FOR THE USE
12 OF AND ACCESS TO ITS SPARE CONDUIT TO ENSURE THAT THE DEPARTMENT RECEIVES
13 FAIR COMPENSATION FOR THE VALUE OF ITS UNDERGROUND INSTALLATIONS OF
14 CONDUIT AND RELATED FACILITIES. THE COMPENSATION MUST BE FAIR AND
15 REASONABLE AND CHARGED IN A COMPETITIVELY NEUTRAL AND NONDISCRIMINATORY
16 MANNER TO ALL SIMILARLY SITUATED PROVIDERS.

17 C. ANY COMPENSATION PURSUANT TO THIS SECTION MUST BE SET FORTH IN
18 AN AGREEMENT ENTERED INTO BETWEEN THE DEPARTMENT AND THE PROVIDER.

19 D. THE DEPARTMENT SHALL DO BOTH OF THE FOLLOWING:

20 1. DETERMINE THE ANNUAL COMPENSATION TO BE PAID BY EACH PROVIDER
21 FOR THE USE OF ITS CONDUIT AND RELATED FACILITIES BASED ON THE PRESENT
22 VALUE OF THE ESTIMATED, REASONABLE COST TO THE DEPARTMENT OF TRENCHING TO
23 PLACE CONDUIT, FIBER AND OTHER RELATED FACILITIES.

24 2. CONDUCT AN ANALYSIS EVERY FIVE YEARS TO DETERMINE IF THERE ARE
25 ANY CHANGES IN THE VALUE OF ITS SPARE CONDUIT AND RELATED FACILITIES. IF
26 THE DEPARTMENT DETERMINES THAT THE VALUE OF ITS SPARE CONDUIT OR RELATED
27 FACILITIES HAS CHANGED, THE DEPARTMENT MUST APPLY THE NEW VALUES TO EACH
28 NEWLY EXECUTED AGREEMENT.

29 E. THE DEPARTMENT MAY ACCEPT IN-KIND COMPENSATION FOR THE USE OF
30 AND ACCESS TO ITS SPARE CONDUIT AND RELATED FACILITIES IN ACCORDANCE WITH
31 THE VALUATION PROCEDURES PRESCRIBED IN SECTION 28-7385.

32 F. THE DEPARTMENT SHALL DEPOSIT, PURSUANT TO SECTIONS 35-146 AND
33 35-147, MONIES COLLECTED PURSUANT TO THIS SECTION IN THE SMART HIGHWAY
34 CORRIDOR TRUST FUND ESTABLISHED BY SECTION 28-7387.

35 28-7387. Smart highway corridor trust fund; purpose

36 A. THE SMART HIGHWAY CORRIDOR TRUST FUND IS ESTABLISHED CONSISTING
37 OF THE FOLLOWING:

38 1. LEGISLATIVE APPROPRIATIONS.

39 2. MONIES RECEIVED FROM THE SALES OR LEASES OF RIGHTS-OF-WAY,
40 TELECOMMUNICATION FACILITIES AND TELECOMMUNICATION SERVICES PURSUANT TO
41 SECTIONS 28-7385 AND 28-7386.

42 B. MONIES IN THE SMART HIGHWAY CORRIDOR TRUST FUND SHALL BE USED
43 FOR THE MAINTENANCE, OPERATION AND EXPANSION OF TELECOMMUNICATION
44 FACILITIES AND TELECOMMUNICATION SERVICES WITHIN RIGHTS-OF-WAY THAT ARE
45 MANAGED BY THE DEPARTMENT.

1 C. THE DEPARTMENT SHALL ADMINISTER THE FUND. MONIES IN THE FUND
2 ARE CONTINUOUSLY APPROPRIATED. MONIES IN THE FUND ARE EXEMPT FROM THE
3 PROVISIONS OF SECTION 35-190 RELATING TO LAPSING OF APPROPRIATIONS.

4 D. ON NOTICE FROM THE DEPARTMENT, THE STATE TREASURER SHALL INVEST
5 AND DIVEST MONIES IN THE FUND AS PROVIDED BY SECTION 35-313, AND MONIES
6 EARNED FROM INVESTMENT SHALL BE CREDITED TO THE FUND.

7 Sec. 6. Exemption from rulemaking

8 Notwithstanding any other law, for the purposes of this act, the
9 department of transportation is exempt from the rulemaking requirements of
10 title 41, chapter 6, Arizona Revised Statutes, for one year after the
11 effective date of this act.