

REFERENCE TITLE: wireless facilities; residential neighborhoods; approval

State of Arizona  
House of Representatives  
Fifty-fifth Legislature  
Second Regular Session  
2022

## **HB 2795**

Introduced by  
Representatives Powers Hannley: Andrade, Fernandez B

AN ACT

AMENDING SECTIONS 9-592, 9-593 AND 9-594, ARIZONA REVISED STATUTES;  
RELATING TO PUBLIC UTILITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 9-592, Arizona Revised Statutes, is amended to  
3 read:

4 9-592. Applicability; wireless provider; use of right-of-way;  
5 rates, fees and terms; right to access; damage and  
6 repair

7 A. This section applies to the activities of a wireless provider  
8 within a right-of-way.

9 B. An authority may not enter into an exclusive arrangement with a  
10 wireless provider for use of a right-of-way for any of the following:

11 1. ~~The construction, installation, maintenance, modification,~~  
12 ~~operation or replacement of~~ CONSTRUCTING, INSTALLING, MAINTAINING,  
13 MODIFYING, OPERATING OR REPLACING utility poles or monopoles.

14 2. ~~The collocation of~~ COLLOCATING small wireless facilities on  
15 utility poles or wireless support structures.

16 3. ~~The collocation of~~ COLLOCATING wireless facilities on monopoles.

17 C. An authority may charge a wireless provider a rate or fee for  
18 the use of a right-of-way for the construction, installation, maintenance,  
19 modification, operation or replacement of a utility pole in the  
20 right-of-way or the collocation of a small wireless facility in the  
21 right-of-way, only if the authority charges other communications service  
22 providers or publicly, cooperatively or municipally owned utilities for  
23 the use of the right-of-way and the authority has the legal authority to  
24 do so. If an authority charges a rate or fee pursuant to this section,  
25 the rate or fee for a wireless provider must be:

26 1. Limited to not more than the direct and actual cost of managing  
27 the right-of-way.

28 2. Competitively neutral in regard to other users of the  
29 right-of-way, including investor-owned, authority-owned or cooperatively  
30 owned entities, unless other users are exempt from such rates or fees  
31 under applicable law.

32 D. A rate or fee charged pursuant to subsection C of this section  
33 may not do any of the following:

34 1. Result in a double recovery where existing rates, fees or taxes  
35 already recover the direct and actual costs of managing a right-of-way.

36 2. Be in the form of a franchise or other fee based on revenue or  
37 customer counts.

38 3. Be unreasonable or discriminatory.

39 4. Exceed an annual amount equal to ~~fifty dollars~~ \$50 multiplied by  
40 the number of small wireless facilities that are in the authority's  
41 geographic jurisdiction and that are placed by the wireless provider in  
42 the right-of-way.

43 E. An authority shall establish and make available rates, fees and  
44 terms for all of the following, within six months after August 9, 2017 or

1 three months after receiving the first request by a wireless provider,  
2 whichever is later:

3 1. ~~The construction, installation, mounting, maintenance,~~  
4 ~~modification, operation or replacement of~~ CONSTRUCTING, INSTALLING,  
5 MOUNTING, MAINTAINING, MODIFYING, OPERATING OR REPLACING a utility pole  
6 or monopole by a wireless provider in a right-of-way.

7 2. ~~The collocation of~~ COLLOCATING a small wireless facility by a  
8 wireless provider in a right-of-way.

9 3. ~~The collocation of~~ COLLOCATING a wireless facility on or within  
10 a monopole by a wireless provider in a right-of-way.

11 F. The rates, fees and terms established pursuant to subsection E  
12 of this section must be made available for acceptance by a wireless  
13 provider. At the wireless provider's option, a wireless provider may  
14 request different or additional terms that the parties shall negotiate in  
15 good faith. Documents that reflect rates, fees and terms with each  
16 wireless provider are public records. Rates, fees and terms must comply  
17 with this article, and the terms:

18 1. May not be unreasonable or discriminatory.

19 2. May include requirements applicable to other users of the  
20 right-of-way.

21 3. May require that the wireless provider's operation of the small  
22 wireless facilities in the right-of-way does not interfere with the  
23 authority's public safety communications.

24 4. Subject to subsection ~~K~~ L of this section and section 9-593,  
25 subsection ~~F~~ G, may not require the placement of small wireless  
26 facilities on any specific utility pole or category of poles or require  
27 multiple antenna systems on a single utility pole.

28 5. Subject to subsection ~~K~~ L of this section and section 9-593,  
29 subsection ~~F~~ G, may not limit the placement of small wireless facilities  
30 by minimum separation distances.

31 G. Agreements between authorities and wireless providers that are  
32 in effect on August 9, 2017 and that relate to ~~the collocation of~~  
33 COLLOCATING small wireless facilities in the right-of-way, including ~~the~~  
34 ~~collocation of~~ COLLOCATING small wireless facilities on authority utility  
35 poles, remain in effect, subject to applicable termination provisions.  
36 The wireless provider may accept the rates, fees and terms established  
37 under subsections E and F of this section for small wireless facilities  
38 and utility poles that are the subject of an application submitted after  
39 the rates, fees and terms become effective.

40 H. Subject to this section and the approval of an application, if  
41 required, a wireless provider may do any of the following:

42 1. Collocate small wireless facilities.

43 2. Construct, install, modify, mount, maintain, operate and replace  
44 utility poles that are associated with ~~the collocation of~~ COLLOCATING  
45 small wireless facilities along, across, on and under the right-of-way.

1           3. Construct, install, modify, mount, maintain, operate and replace  
2 monopoles that are associated with ~~the collocation of~~ COLLOCATING wireless  
3 facilities along, across, on and under the right-of-way. The  
4 installation, modification and replacement of monopoles are subject to  
5 review under section 9-594 regardless of the height of the monopole.

6           I. Subject to subsection ~~K~~ L, paragraph 2, subdivision (c) of this  
7 section, a new, replacement or modified utility pole that is associated  
8 with the collocation of small wireless facilities and that is installed in  
9 the right-of-way is not subject to zoning review and approval under  
10 section 9-594 if the utility pole does not exceed the greater of either:

11           1. Ten feet in height above the tallest existing utility pole,  
12 other than a utility pole supporting only wireless facilities, that is in  
13 place on August 9, 2017, that is located within five hundred feet of the  
14 new, replacement or modified utility pole and that is in the same  
15 right-of-way within the jurisdictional boundary of the authority, but not  
16 more than fifty feet above ground level.

17           2. Forty feet above ground level.

18           J. New small wireless facilities collocated on a utility pole or  
19 wireless support structure in the right-of-way are not subject to zoning  
20 review and approval if they do not extend more than ten feet above the  
21 utility pole or wireless support structure and do not exceed fifty feet  
22 above ground level.

23           K. NOTWITHSTANDING ANY OTHER LAW, BEFORE COLLOCATING A SMALL  
24 WIRELESS FACILITY IN A RESIDENTIAL AREA, THE WIRELESS PROVIDER SHALL  
25 OBTAIN WRITTEN AUTHORIZATION FROM AT LEAST EIGHTY PERCENT OF THE  
26 SINGLE-FAMILY HOMEOWNERS WITHIN A ONE-HALF-MILE RADIUS OF THE PROPOSED  
27 LOCATION OF THE SMALL WIRELESS FACILITY. THE WRITTEN AUTHORIZATION SHALL  
28 BE PROVIDED TO THE AUTHORITY WITH ANY APPLICATION THAT IS REQUIRED UNDER  
29 THIS SECTION.

30           ~~K~~ L. An authority may require an application under this section  
31 for ~~the installation of~~ INSTALLING new, replacement or modified utility  
32 poles associated with the collocation of small wireless facilities. An  
33 authority shall approve an application unless the authority finds that the  
34 utility pole fails to comply with any of the following:

35           1. Applicable codes.

36           2. Local code provisions or regulations that concern any of the  
37 following:

38           (a) Public safety.

39           (b) Objective design standards and reasonable stealth and  
40 concealment requirements.

41           (c) Undergrounding requirements that prohibit ~~the installation of~~  
42 INSTALLING new or ~~the modification of~~ MODIFYING existing utility poles or  
43 monopoles in a right-of-way without prior approval, if such requirements  
44 include a waiver, zoning or another process that addresses requests to  
45 install such new utility poles or monopoles or modify such existing

1 utility poles or monopoles and do not prohibit ~~the replacement of~~  
2 REPLACING utility poles or monopoles.

3 3. Requirements that are imposed by a contract between an authority  
4 and a private property owner and that concern design standards applicable  
5 to utility poles in the right-of-way.

6 4. The authority's public safety and reasonable spacing  
7 requirements that concern the location of new utility poles in a  
8 right-of-way.

9 5. SUBSECTION K OF THIS SECTION.

10 ~~t.~~ M. An authority shall process applications under subsection  
11 ~~K~~ L of this section in compliance with applicable law. If an authority  
12 fails to approve or deny an application within the time frame specified by  
13 applicable law, the application shall be deemed approved. Any application  
14 fee is subject to the requirements provided in section 9-593, subsection  
15 ~~J~~ K. The total application fee, if allowed, may not exceed ~~seven hundred~~  
16 ~~fifty dollars~~ \$750.

17 ~~M.~~ N. The construction, installation, mounting, maintenance,  
18 modification, operation or replacement for which a permit is granted shall  
19 be completed within one hundred eighty days after the permit issuance  
20 date, unless the authority and wireless provider agree to extend this  
21 period or a delay is caused by a lack of commercial power at the site.

22 ~~N.~~ O. Approval of an application by an authority authorizes the  
23 applicant to do both of the following:

24 1. Undertake the requested deployment.

25 2. Subject to applicable relocation requirements, the authority's  
26 terms as described in this section and the wireless provider's right to  
27 terminate at any time, operate and maintain the wireless provider's new,  
28 modified or replacement utility pole for a period of not less than ten  
29 years, which must be renewed for equivalent durations unless the authority  
30 makes a finding that the new or modified utility pole does not comply with  
31 the requirements described in subsection ~~K~~ L of this section.

32 ~~O.~~ P. An authority may require a wireless provider to repair all  
33 damage to the authority's property and the right-of-way that is caused by  
34 the activities of the wireless provider or the wireless provider's  
35 contractor while occupying, installing, repairing or maintaining small  
36 wireless facilities, wireless support structures or utility poles in the  
37 right-of-way and to return the damaged property to the same condition as  
38 before the damage pursuant to the competitively neutral, reasonable  
39 requirements and specifications of the authority. If the wireless  
40 provider fails to make the repairs required by the authority within a  
41 reasonable time after the authority provides written notice to the  
42 wireless provider, the authority may make the repairs and charge the  
43 applicable party the reasonable, documented cost of the repairs.

1 ~~P.~~ Q. This article does not relieve a wireless provider from any  
2 applicable requirement to obtain a franchise, license or other permission  
3 to provide communications service or to install, place, maintain or  
4 operate facilities or structures that are not authorized by this article  
5 in the right-of-way to provide a communications service.

6 Sec. 2. Section 9-593, Arizona Revised Statutes, is amended to  
7 read:

8 9-593. Applicability; collocation of small wireless  
9 facilities; permits; application; fee

10 A. This section applies to the activities of a wireless provider  
11 within a right-of-way.

12 B. Except as provided in this section and sections 9-592, 9-594,  
13 9-595, 9-597, 9-598 and 9-599, as applicable, an authority may not  
14 prohibit, regulate or charge for ~~the collocation of~~ COLLOCATING small  
15 wireless facilities.

16 C. Subject to this section and section 9-592, subsection J, a small  
17 wireless facility is classified as a permitted use and is not subject to  
18 zoning review or approval if the small wireless facility is collocated in  
19 a right-of-way in any zone.

20 D. NOTWITHSTANDING ANY OTHER LAW, BEFORE COLLOCATING A SMALL  
21 WIRELESS FACILITY IN A RESIDENTIAL AREA, THE WIRELESS PROVIDER SHALL  
22 OBTAIN WRITTEN AUTHORIZATION FROM AT LEAST EIGHTY PERCENT OF THE  
23 SINGLE-FAMILY HOMEOWNERS WITHIN A ONE-HALF-MILE RADIUS OF THE PROPOSED  
24 LOCATION OF THE SMALL WIRELESS FACILITY. THE WRITTEN AUTHORIZATION SHALL  
25 BE PROVIDED TO THE AUTHORITY WITH ANY APPLICATION THAT IS REQUIRED UNDER  
26 THIS SECTION.

27 ~~D.~~ E. An authority may require an applicant to obtain one or more  
28 permits to collocate a small wireless facility if the permit requirement  
29 is of general applicability and does not apply exclusively to wireless  
30 facilities. An applicant seeking to collocate multiple small wireless  
31 facilities within the jurisdiction of a single authority may file a  
32 consolidated application ~~for the collocation of~~ TO COLLOCATE up to  
33 twenty-five small wireless facilities if the collocations each involve  
34 substantially the same type of small wireless facilities and substantially  
35 the same type of structure.

36 ~~E.~~ F. An application must include an attestation that the small  
37 wireless facilities will be collocated on the utility pole or wireless  
38 support structure and that the small wireless facilities will be  
39 operational for use by a wireless services provider to provide service  
40 within one hundred eighty days after the permit issuance date, unless the  
41 authority and the wireless provider agree to extend this period or a delay  
42 is caused by a lack of commercial power at the site.

43 ~~F.~~ G. An authority:

44 1. Shall accept applications for, process and issue permits to  
45 collocate small wireless facilities.

1           2. Within twenty days after receiving an application, shall  
2 determine and notify the applicant whether the application is complete.  
3 If an applicant is not notified within the twenty-day period, the  
4 application is deemed complete. If an application is incomplete, the  
5 authority must specifically identify the information missing from the  
6 application.

7           3. Shall process each application on a nondiscriminatory basis. A  
8 complete application is deemed approved if the authority fails to approve  
9 or deny the application within seventy-five days after receiving a  
10 complete application.

11           4. Shall approve an application unless the application does not  
12 COMPLY WITH SUBSECTION D OF THIS SECTION OR meet the applicable codes, ~~OR~~ OR  
13 local code provisions or regulations that concern public safety, objective  
14 design standards for decorative utility poles or reasonable stealth and  
15 concealment requirements or public safety and reasonable spacing  
16 requirements concerning the location of ground-mounted equipment in a  
17 right-of-way. If an authority determines that applicable codes or local  
18 code provisions or regulations require that the utility pole or wireless  
19 support structure be replaced before the requested collocation, approval  
20 may be conditioned on such replacement of the utility pole or wireless  
21 support structure. The wireless provider's request for a replacement  
22 utility pole or wireless support structure will be processed pursuant to  
23 section 9-592.

24           5. If an application is denied, shall document the basis for the  
25 denial, including the specific code provisions, regulations or  
26 requirements on which the denial was based, and send the documentation to  
27 the applicant on or before the date that the application is denied. The  
28 applicant may cure the deficiencies identified by the authority and  
29 resubmit the application within thirty days after the denial without  
30 paying an additional application fee. The authority shall approve or deny  
31 the revised application within thirty days after receiving the revised  
32 application. Any subsequent review is limited to the deficiencies cited  
33 in the denial.

34           6. If an application includes multiple small wireless facilities,  
35 may remove small wireless facility collocations from the application and  
36 treat separately small wireless facility collocations for which incomplete  
37 information has been provided or that do not qualify for consolidated  
38 treatment or that are denied. The authority may issue separate permits  
39 for each collocation that is approved in a consolidated application.

40           ~~G.~~ H. An authority may not:

41           1. Directly or indirectly require an applicant to perform services  
42 that are unrelated to the collocation for which approval is sought, such  
43 as in-kind contributions to the authority, including reserving fiber,  
44 conduit or pole space on the wireless provider's monopole or utility pole  
45 for the authority.

1           2. EXCEPT AS PROVIDED IN SUBSECTION D OF THIS SECTION, require an  
2 applicant to provide more information to obtain a permit than the  
3 authority requires of a communications service provider that is not a  
4 wireless provider and that requests to attach facilities to a structure.  
5 An authority may require the applicant to certify that the small wireless  
6 facilities to be collocated comply with the federal communications  
7 commission's regulations concerning radio frequency emissions referenced  
8 in 47 United States Code section 332(c)(7)(B)(iv).

9           3. Institute, either expressly or de facto, a moratorium on filing,  
10 receiving or processing applications or issuing permits or other  
11 approvals, if any, for ~~the collocation of~~ COLLOCATING a small wireless  
12 facility.

13           4. Require an application for routine maintenance or the  
14 replacement of small wireless facilities with small wireless facilities  
15 that are substantially similar or the same size or smaller. An authority  
16 may require a permit to work within a right-of-way for such activities, if  
17 applicable. A permit issued pursuant to this paragraph is subject to the  
18 requirements of this section.

19           ~~H.~~ I. Collocation for which a permit is granted shall be completed  
20 within one hundred eighty days after the permit issuance date, unless the  
21 authority and the wireless provider agree to extend this period or a delay  
22 is caused by the lack of commercial power at the site.

23           ~~I.~~ J. Approval of an application by an authority allows the  
24 applicant to do both of the following:

25           1. Collocate the small wireless facilities.

26           2. Subject to applicable relocation requirements, the wireless  
27 provider's right to terminate at any time and the authority's terms  
28 described in section 9-592, operate and maintain the small wireless  
29 facilities for a period of not less than ten years, which must be renewed  
30 for equivalent durations unless the authority makes a finding that the  
31 small wireless facilities do not comply with the applicable codes or local  
32 code provisions or regulations described in subsection ~~F.~~ G, paragraph 4  
33 of this section.

34           ~~J.~~ K. An authority may charge an application fee that is limited  
35 to the actual, direct and reasonable costs that are incurred by the  
36 authority and that relate to the granting or processing of an application.  
37 An application fee shall be reasonably related in time to the incurring of  
38 such costs. If such costs are already recovered by existing fees, rates  
39 or taxes that are paid by a wireless provider, an authority may not charge  
40 an application fee to recover such costs. An application fee may not  
41 include:

42           1. Third-party travel expenses that are incurred to review an  
43 application.



1           2. The direct payment or reimbursement of third-party rates or fees  
2 that are charged on a contingency basis or pursuant to a result-based  
3 arrangement.

4           ~~K.~~ L. The total application fee, if allowed, may not exceed  
5 ~~one hundred dollars~~ \$100 each for up to five small wireless facilities  
6 addressed in an application and ~~fifty dollars~~ \$50 for each additional  
7 small wireless facility addressed in the application.

8           ~~L.~~ M. This article does not allow a person to collocate small  
9 wireless facilities on a privately owned utility pole, a privately owned  
10 wireless support structure or private property without the consent of the  
11 property owner.

12           Sec. 3. Section 9-594, Arizona Revised Statutes, is amended to  
13 read:

14           9-594. Structures subject to zoning; time frames;  
15 application; fees

16           A. The following activities that take place inside of a  
17 right-of-way are subject to this section and all of the authority's codes  
18 and regulations, including the authority's zoning codes and other  
19 regulatory processes governing use of the rights-of-way, unless the  
20 activities are exempt from zoning review and approval under section 9-592,  
21 subsection I or J or section 9-593, subsection C:

22           1. ~~The installation of~~ INSTALLING new monopoles, utility poles or  
23 wireless facilities.

24           2. ~~The collocation of~~ COLLOCATING wireless facilities.

25           B. Notwithstanding any provision in this article to the contrary,  
26 ~~the construction, installation, maintenance, modification, operation or~~  
27 ~~replacement of~~ CONSTRUCTING, INSTALLING, MAINTAINING, MODIFYING, OPERATING  
28 OR REPLACING a monopole or associated wireless facility in a right-of-way  
29 is subject to all of the authority's codes and regulations, including the  
30 authority's zoning codes and other regulatory processes governing use of  
31 the rights-of-way.

32           C. An authority shall:

33           1. Accept and process applications for ~~the modification of~~  
34 MODIFYING existing or ~~the installation of~~ INSTALLING new monopoles,  
35 utility poles or wireless facilities and ~~the collocation of~~ COLLOCATING  
36 wireless facilities.

37           2. Within thirty days after receiving an application, notify the  
38 applicant whether the application is complete. If an application is  
39 incomplete, the authority must specifically identify the information  
40 missing from the application.

41           3. Process each complete application on a nondiscriminatory basis.  
42 A complete application is deemed approved if the authority fails to  
43 approve or deny the application within one hundred fifty days after  
44 receipt of an application for ~~the modification of~~ MODIFYING existing or  
45 ~~the installation of~~ INSTALLING new monopoles, utility poles or wireless

1 facilities or within ninety days after receipt of a complete application  
2 for ~~the collocation of~~ COLLOCATING wireless facilities. The time period  
3 for approval may be tolled to accommodate timely requests for information  
4 required to complete the application or may be extended by mutual  
5 agreement between the applicant and authority.

6 4. If a complete application is denied, notify the applicant in  
7 writing and provide substantial supporting evidence of the reason for  
8 denial in the written record. The written notification of the denial and  
9 the supporting evidence shall be publicly released contemporaneously.  
10 There must be a reasonable basis for the denial of an application. An  
11 authority may not deny an application if the denial is discriminatory  
12 against the applicant with respect to the placement of the facilities of  
13 other wireless providers.

14 D. An authority may not:

15 1. Require an applicant to submit information about the applicant's  
16 business decisions regarding the need for the monopole, utility pole or  
17 wireless facilities.

18 2. Require an applicant to submit information about, or evaluate an  
19 applicant's business decisions regarding, the applicant's service,  
20 customer demand for service or quality of service.

21 3. Institute, either expressly or de facto, a moratorium on filing,  
22 receiving or processing applications or issuing decisions for  
23 modifications or installations that are not a permitted use.

24 E. An authority, in addition to other rights the authority has  
25 under federal, state or local law, may:

26 1. Adopt reasonable requirements regarding the appearance and  
27 concealment of facilities, including those relating to materials used for  
28 arranging, screening or landscaping.

29 2. Adopt setback or fall zone requirements that are substantially  
30 similar to setback or fall zone requirements that are imposed on other  
31 types of commercial structures of a similar height.

32 3. Charge an application fee. Any application fee is subject to  
33 the requirements provided in section 9-593, subsection ~~J~~ K. The total  
34 application fee, if allowed, may not exceed ~~one thousand dollars~~ \$1,000  
35 for ~~the modification of~~ MODIFYING existing or ~~the installation of~~  
36 INSTALLING new monopoles or utility poles or for ~~the collocation of~~  
37 COLLOCATING wireless facilities.

38 4. Charge a rate or fee for the use of the right-of-way for ~~the~~  
39 ~~installation of~~ INSTALLING a monopole and associated wireless facility  
40 that is limited to not more than the direct and actual costs of managing  
41 the right-of-way and that is not in the form of a franchise or other fee  
42 based on revenue or customer counts.

43 F. An applicant's business decisions regarding the type and  
44 location of wireless facilities, monopoles or utility poles or the  
45 technology to be used are presumed to be reasonable. This presumption

1 does not apply to the height or appearance of wireless facilities,  
2 monopoles or utility poles. An authority may consider the height of such  
3 structures in the zoning or other regulatory review, provided that the  
4 authority does not unreasonably discriminate between the applicant and  
5 other communications service providers that install wireless facilities.

6 G. Subject to applicable relocation requirements, the authority's  
7 terms described in section 9-592 and the wireless provider's right to  
8 terminate at any time, the approval term of an application shall be for a  
9 period of not less than ten years, which must be renewed for equivalent  
10 durations unless the authority makes a finding that the structure or  
11 facilities do not comply with the applicable codes or terms of the zoning  
12 or other regulatory process approval. Construction of the approved  
13 structure or facilities shall be completed within one hundred eighty days  
14 after the permit issuance date, unless the authority and the wireless  
15 provider agree to extend this period or a delay is caused by the lack of  
16 commercial power at the site.