

REFERENCE TITLE: broadband conduit installation; right-of-way; ADOT

State of Arizona
Senate
Fiftieth Legislature
Second Regular Session
2012

SB 1402

Introduced by
Senators Driggs: Allen, Griffin, McComish, Melvin, Nelson, Shooter, Smith;
Representatives Barton, Brophy McGee, Forese, Harper, Jones, Pierce

AN ACT

AMENDING TITLE 28, CHAPTER 20, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 14; AMENDING SECTION 28-7701, ARIZONA REVISED STATUTES; RELATING TO BROADBAND CONDUIT INSTALLATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 28, chapter 20, Arizona Revised Statutes, is amended
3 by adding article 14, to read:

4 ARTICLE 14. BROADBAND CONDUIT INSTALLATION

5 28-7381. Definitions

6 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 1. "BROADBAND CONDUIT" MEANS A CONDUIT, INNERDUCT OR MICRODUCT FOR
8 FIBER OPTIC CABLES THAT SUPPORT BROADBAND AND WIRELESS FACILITIES FOR
9 BROADBAND SERVICE.

10 2. "BROADBAND SERVICE":

11 (a) MEANS PROVIDING ACCESS AND TRANSPORT TO THE INTERNET, COMPUTER
12 PROCESSING, INFORMATION STORAGE OR PROTOCOL CONVERSION AT A RATE OF AT LEAST
13 ONE MEGABIT PER SECOND IN EITHER THE UPSTREAM OR DOWNSTREAM DIRECTION, AS
14 ESTABLISHED BY THE FEDERAL COMMUNICATIONS COMMISSION.

15 (b) DOES NOT INCLUDE INFORMATION CONTENT OR SERVICE APPLICATIONS
16 PROVIDED OVER THE ACCESS SERVICE OR ANY INTRASTATE SERVICE THAT WAS SUBJECT
17 TO A TARIFF AS OF JANUARY 1, 2012.

18 3. "COST-BASED RATE" MEANS A LEASE RATE THAT IS ONLY COMPRISED OF
19 DIRECT AND ASSOCIATED INDIRECT COSTS OF OBTAINING AND MAINTAINING THE
20 ASSOCIATED RIGHT-OF-WAY AND BROADBAND CONDUIT.

21 4. "COVERED RURAL HIGHWAY CONSTRUCTION PROJECT"

22 MEANS A PROJECT TO CONSTRUCT A NEW RURAL HIGHWAY OR TO CONSTRUCT OR
23 RELOCATE AN ADDITIONAL LANE OR SHOULDER FOR AN EXISTING RURAL HIGHWAY THAT IS
24 COMMENCED AFTER THE EFFECTIVE DATE OF THIS SECTION AND THAT RECEIVES FUNDING
25 FROM STATE OR FEDERAL MONIES.

26 5. "PROVIDER" MEANS AN ENTITY THAT PROVIDES FOR THE SALE OR RESALE OF
27 WHOLESALE OR RETAIL BROADBAND SERVICES IN THIS STATE AND THAT IS RECOGNIZED
28 AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER OR A QUALIFIED BROADBAND PROVIDER
29 BY THE ARIZONA CORPORATION COMMISSION OR THAT MEETS FEDERAL COMMUNICATIONS
30 COMMISSION AND INDUSTRY CARRIER CLASS SERVICE GUIDELINES.

31 6. "RURAL HIGHWAY" MEANS THAT PORTION OF ANY HIGHWAY IN THIS STATE
32 THAT IS EITHER OF THE FOLLOWING:

33 (a) OUTSIDE OF THE MUNICIPAL BOUNDARY OF ANY CITY OR TOWN HAVING A
34 POPULATION OF TEN THOUSAND PERSONS OR MORE.

35 (b) OUTSIDE OF FEDERAL METROPOLITAN AND MICROPOLITAN STATISTICAL
36 AREAS.

37 28-7382. Broadband conduit installation; rural highway
38 construction projects

39 A. THE DIRECTOR MAY INSTALL BROADBAND CONDUIT IN ACCORDANCE WITH THIS
40 ARTICLE AS PART OF A COVERED RURAL HIGHWAY CONSTRUCTION PROJECT IF FUNDING IS
41 RECEIVED BY THE DEPARTMENT TO COVER THE COST.

42 B. IN CARRYING OUT THIS ARTICLE, THE DIRECTOR MAY LEASE THE BROADBAND
43 CONDUIT TO PROVIDERS AT A COST-BASED RATE AND COORDINATE WITH PROVIDERS
44 REGARDING PLANNING AND RELOCATING OF BROADBAND CONDUIT AND ANY RELATED
45 PROVIDER FACILITIES WITHIN THE RIGHT-OF-WAY AT THE PROVIDER'S EXPENSE IF

1 FUTURE HIGHWAY IMPROVEMENTS MAKE THE RELOCATIONS NECESSARY. THE DIRECTOR MAY
2 LIMIT PROVIDER ACCESS TO ANY BROADBAND FACILITIES WITHIN THE RIGHT-OF-WAY FOR
3 INITIAL INSTALLATION AND INFREQUENT ACCESS FOR MAINTENANCE PURPOSES AND MAY
4 TAKE OTHER ACTIONS NECESSARY TO MAINTAIN HIGHWAY SAFETY.

5 C. THE DIRECTOR MAY INSTALL BROADBAND CONDUIT WITHOUT REGARD TO THE
6 TIMING OF A RELATED EXISTING ROAD CONSTRUCTION PROJECT, BASED ON A REQUEST
7 AND RECEIPT OF FUNDING FROM STATE ENTITIES CHARGED WITH RESPONSIBILITY FOR
8 BROADBAND INFRASTRUCTURE AND POLICY.

9 Sec. 2. Section 28-7701, Arizona Revised Statutes, is amended to read:

10 28-7701. Definitions

11 In this chapter, unless the context otherwise requires:

12 1. "Concession" means any lease, ground lease, franchise, easement,
13 permit or other binding agreement transferring rights for the use or control,
14 in whole or in part, of an eligible facility by the department or other unit
15 of government to a private partner in accordance with this chapter.

16 2. "Eligible facility" means any facility, whether real or personal
17 property, developed or operated after September 30, 2009 in accordance with
18 this chapter, including any existing, enhanced, upgraded or new facility that
19 is any of the following:

20 (a) Used or useful for the safe transport of people, **INFORMATION** or
21 goods via one or more modes of transport, whether involving highways,
22 bridges, tunnels, **CONDUITS**, railways, monorails, transit, bus systems, guided
23 rapid transit, fixed guideways, ferries, boats, vessels, airports, intermodal
24 or multimodal systems or any other mode of transport.

25 (b) Used by or useful to the department, including vehicle
26 registration and driver licensing facilities, operating systems and
27 information systems.

28 (c) Related or ancillary to, or used or useful to provide, operate,
29 maintain or generate revenue for, a facility under subdivision (a) or (b),
30 including administrative buildings and other buildings, structures, parking,
31 rest areas, maintenance yards, rail yards, ports of entry or storage
32 facilities, vehicles, rolling stock, energy systems or other related
33 equipment, items or property.

34 3. "Private partner" means a person, entity or organization that is
35 not the federal government, this state, a political subdivision of this state
36 or a unit of government.

37 4. "Unit of government" means any agency, office or department of this
38 state, city, county, district, commission, authority, entity, port or other
39 public corporation organized and existing under statutory law or under a
40 voter approved charter or initiative, and any intergovernmental entity.

41 Sec. 3. Short title

42 This act may be cited as the "Digital Arizona Highways Act of 2012".