

REFERENCE TITLE: telecommunications; public highways; use; fees

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

HB 2108

Introduced by
Representative Weninger

AN ACT

AMENDING SECTION 9-583, ARIZONA REVISED STATUTES; RELATING TO USE OF
PUBLIC HIGHWAYS BY TELECOMMUNICATIONS PROVIDERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 9-583, Arizona Revised Statutes, is amended to
3 read:

4 9-583. Issuance of license or franchise; use of public
5 highways; limitations

6 A. A political subdivision shall not adopt any ordinance that may
7 prohibit or have the effect of prohibiting the ability of any
8 telecommunications corporation to provide telecommunications service.
9 ~~Nothing in~~ This section ~~affects~~ DOES NOT AFFECT the authority of a
10 political subdivision to manage the public highways within its
11 jurisdiction or to exercise its police powers.

12 B. The governing board of a political subdivision may issue to a
13 telecommunications corporation a license or franchise to use the public
14 highways within the political subdivision to construct, install, operate
15 and maintain telecommunications facilities. The political subdivision
16 shall issue licenses or franchises on a competitively neutral and
17 nondiscriminatory basis to persons subject to this section, within a
18 reasonable period of time after application. As a condition of issuing a
19 license or franchise to use the public highways to construct, install,
20 operate and maintain telecommunications facilities, or a renewal thereof,
21 a political subdivision may impose reasonable, competitively neutral and
22 nondiscriminatory requirements on applicants ~~which~~ THAT may include only:

23 1. Proof that the applicant has received a certificate of
24 convenience and necessity from the ~~Arizona~~ corporation commission.

25 2. Public highway use requirements.

26 3. Mapping requirements.

27 4. Insurance, performance bonds, indemnification or similar
28 requirements.

29 5. Enforcement and administrative provisions, consistent with this
30 section.

31 C. A political subdivision may require a telecommunications
32 corporation that will place underground facilities in the public highways,
33 exclusive of facilities used by the local network and the portion of the
34 interstate network that carries intrastate calls, for interstate
35 telecommunications services to pay a fee as provided in this subsection
36 and, subject to section 9-582, subsection A, paragraph 2, to obtain a
37 license or franchise under this subsection to use the public highways to
38 construct, install, operate and maintain facilities for these services.
39 Subsections A, B, D and E of this section apply except:

40 1. The requirement provided in subsection B, paragraph 1 of this
41 section does not apply to a telecommunications corporation that provides
42 solely interstate telecommunications services within this state.

43 2. A political subdivision may require a telecommunications
44 corporation operating under this subsection to pay an annual fee based on
45 the number of linear feet of trench in the public highways in which the

1 telecommunications corporation has placed facilities that carry interstate
2 traffic between and among the telecommunications corporation's interstate
3 points of presence exclusive of facilities used by the local network and
4 the portion of the interstate network that carries intrastate calls. A
5 POLITICAL SUBDIVISION MAY NOT REQUIRE THIS ANNUAL FEE FOR ANY UNDERGROUND
6 FACILITY THAT IS USED FOR A SMALL WIRELESS FACILITY AS DEFINED IN SECTION
7 9-591.

8 3. The rate per linear foot used in paragraph 2 of this subsection
9 shall not exceed the highest rate per linear foot a political subdivision
10 in this state charged any licensee or franchisee on or before December 31,
11 1999. The rate per linear foot shall not be increased in any calendar year
12 by more than the increase in the average consumer price index as published
13 by the United States department of labor, bureau of labor statistics.

14 D. A telecommunications licensee or franchisee may enter into
15 contracts for use of the licensee's or franchisee's facilities within the
16 public highways to provide telecommunications services. A political
17 subdivision may require a telecommunications licensee or franchisee to
18 disclose all persons with whom it contracts to use its facilities in the
19 public highways within the political subdivision to provide
20 telecommunications services. A political subdivision may require a person
21 using a licensee's or franchisee's facilities in the public highways
22 within the political subdivision to obtain from the political subdivision
23 a telecommunications license or franchise if the person constructs,
24 installs, operates or maintains telecommunications facilities within the
25 public highways of the political subdivision.

26 E. The requirements imposed in a telecommunications license or
27 franchise shall treat similarly situated telecommunications corporations
28 similarly. The requirements may be changed over time and applied
29 prospectively. ~~Nothing in~~ This subsection ~~or~~ AND subsection B of this
30 section ~~affects~~ DO NOT AFFECT section 9-582, subsection D. A political
31 subdivision may distinguish between a telecommunications corporation
32 described in section 9-582, subsection E and other telecommunications
33 corporations to a justifiable extent based on differences in legal rights.

34 F. Subsections B through E of this section do not apply to a
35 telecommunications corporation described in section 9-582, subsection E.

36 G. The requirements of this section apply to applicants for
37 licenses or franchises filed and acted on after December 1, 1998 or if
38 earlier, the date after August 1, 1998 that a political subdivision adopts
39 an ordinance implementing this article. Licenses or franchises issued
40 pursuant to this section shall be for a term of five years and shall be
41 renewed if:

42 1. The telecommunications corporation satisfies the conditions of
43 the renewal license or franchise.

44 2. The renewal applicant has complied with the material terms of
45 its prior license or franchise and applicable law. However, renewal shall

1 not be denied for failure to comply with license or franchise terms unless
2 the licensee or franchisee has had written notice and a reasonable
3 opportunity to cure the defect in past performance. A license or
4 franchise may be revoked for failure to comply with the material terms of
5 the license or franchise or applicable law. Revocation may occur only if
6 the telecommunications corporation is given written notice of the defect
7 in performance and the defect in performance is not cured within sixty
8 days ~~of~~ AFTER the notice, unless the political subdivision finds that the
9 defect in performance is due to intentional misconduct, is a violation of
10 criminal law or is part of a pattern of violations if the
11 telecommunications corporation has already had notice and an opportunity
12 to cure. A political subdivision shall hold a hearing before revoking or
13 refusing to renew a license or franchise if requested by the licensee or
14 franchisee.