Senate Engrossed House Bill
ADOT; telecommunication facilities installation

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

CHAPTER 351

HOUSE BILL 2596

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

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

28-7048. Lease of areas above and below highways; exceptions
A. The director may lease to any public agency, as defined in section 11-951, or to a private person or entity the use of areas above or below state highways, subject to reservations, restrictions and conditions the director deems necessary to assure adequate protection of the safety and integrity of highway facilities and to secure the safety of motorists. Before entering into the lease, the director shall:

1. Determine that the proposed use by a lessee is not in conflict with the zoning regulations of the local government concerned.
2. Make the lease pursuant to procedures prescribed by the board.
3. Make a lease with a private person or entity only after competitive bidding.

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

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

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

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

Sec. 2. Heading change
The article heading of title 28, chapter 20, article 14, Arizona Revised Statutes, is changed from "BROADBAND CONDUIT INSTALLATION" to "TELECOMMUNICATION FACILITY INSTALLATION".

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

28-7381. Definitions
In this article, unless the context otherwise requires:

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

2. 1. "Broadband service":
(a) Means providing access and transport to the internet, computer processing, information storage or protocol conversion at a rate of at
least one megabit per second in either the upstream or downstream
direction, as established by the federal communications commission.
(b) Does not include information content or service applications
provided over the access service or any intrastate service that was
subject to a tariff as of January 1, 2012.

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

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

2. “LONGITUDINAL ACCESS” MEANS ACCESS TO OR USE OF ANY PART OF A
RIGHT-OF-WAY OF A HIGHWAY THAT EXTENDS GENERALLY PARALLEL TO THE
RIGHT-OF-WAY FOR A TOTAL OF THIRTY OR MORE LINEAR METERS.

5. “Provider”:
(a) Means an entity that provides for the sale or resale of
wholesale or retail broadband services in this state and that is
recognized as an eligible telecommunications carrier by the Arizona
corporation commission or that meets federal communications commission and
industry carrier class service guidelines or is a political subdivision
that has statutory authority to provide communications services.
(b) INCLUDES A VIDEO SERVICE PROVIDER AS DEFINED BY SECTION 11-1901.

6. “Rural highway” means that portion of any highway in this state
that is either of the following:
(a) Outside of the municipal boundary of any city or town having a
population of ten thousand persons or more.
(b) Outside of federal metropolitan and micropolitan statistical
areas.

4. “TELECOMMUNICATION FACILITY” MEANS ANY CABLE, LINE, FIBER, WIRE,
CONDUIT, INNERDUCT, ACCESS MANHOLE, HANDHOLE, TOWER, HUT, PEDESTAL, POLE,
BOX, TRANSMITTING EQUIPMENT, RECEIVING EQUIPMENT OR POWER EQUIPMENT OR ANY
OTHER EQUIPMENT, SYSTEM OR DEVICE THAT IS USED TO TRANSMIT, RECEIVE,
PRODUCE OR DISTRIBUTE BY WIRELESS, WIRED LINE, ELECTRONIC OR OPTICAL SIGNAL
FOR COMMUNICATION PURPOSES.
Sec. 4. Section 28-7382, Arizona Revised Statutes, is amended to read:

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

A. The director, OR A PROVIDER WITH PERMISSION FROM THE DEPARTMENT, may install broadband conduit TELECOMMUNICATION FACILITIES in accordance with PURSUANT TO this article as part of a covered rural highway construction project if funding is received by the department to cover the cost.

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

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

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

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

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

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

1. THE COURT OR JURY SHALL ASCERTAIN AND ASSESS THE DIMINUITION IN VALUE OF THE PROPERTY BASED ON THE DIFFERENCE BETWEEN THE FAIR MARKET
VALUE OF THE ENTIRE PARCEL IMMEDIATELY BEFORE THE EXPANDED USE AND THE
FAIR MARKET VALUE OF THE ENTIRE PARCEL IMMEDIATELY AFTER THE EXPANDED USE.
2. EVIDENCE OF REVENUES OR PROFITS DERIVED FROM OR THE RENTAL VALUE
OF AN ASSEMBLED COMMUNICATIONS CORRIDOR ARE NOT ADMISSIBLE IN DETERMINING
FAIR MARKET VALUE.
3. ON PAYMENT OF JUST COMPENSATION, THE EXPANDED USE IS DEEMED
FULLY VESTED IN THE DEPARTMENT AND THE EXPANDED USE SHALL RUN WITH THE
LAND.

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

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

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

K. IF EXCAVATION IS REQUIRED TO INSTALL FIBER OPTIC CABLE OR OTHER
UNDERGROUND TELECOMMUNICATION FACILITIES WITHIN AN EXISTING EASEMENT OR
OTHER PROPERTY RIGHT THAT IS OWNED, HELD OR USED BY THE DEPARTMENT FOR
TRANSPORTATION PURPOSES, A PROVIDER WITH PERMISSION FROM THE DEPARTMENT TO
INSTALL PRIVATELY OWNED TELECOMMUNICATION FACILITIES SHALL PROVIDE WRITTEN
NOTICE TO THE PROPERTY OWNER OF THE EXPANDED USE FOR INSTALLATION OF THE
TELECOMMUNICATION FACILITY BEFORE EXCAVATION. THE PROVIDER SHALL SEND THE
NOTICE BY FIRST CLASS MAIL TO THE LAST KNOWN ADDRESS OF THE PROPERTY
OWNER. A NOTICE SENT TO THE PROPERTY OWNER ENTITLED TO NOTICE UNDER THIS
SUBSECTION MUST INCLUDE ALL OF THE FOLLOWING:
1. THE NAME AND MAILING ADDRESS OF THE PROVIDER.
2. THE MAILING ADDRESS, TELEPHONE NUMBER AND EMAIL ADDRESS OF A
   REPRESENTATIVE OF THE PROVIDER.
3. A SUMMARY STATEMENT DESCRIBING THE ACTIVITIES TO BE CONDUCTED
   DURING THE EXCAVATION.
4. THE APPROXIMATE DATES WHEN THE EXCAVATION WILL START AND END.
L. THE NOTICE PRESCRIBED IN SUBSECTION K OF THIS SECTION IS NOT
REQUIRED BEFORE THE PROVIDER MAY USE AN EASEMENT OR OTHER PROPERTY RIGHT
THAT INCLUDES AN AUTHORIZATION FOR EXCAVATION FOR THE PURPOSES OF
INSTALLING A TELECOMMUNICATION FACILITY. FAILURE TO PROVIDE THE NOTICE
PRESCRIBED IN SUBSECTION K OF THIS SECTION:
1. PROHIBITS THE PROVIDER FROM PROCEEDING WITH AN EXCAVATION UNTIL
   THE NOTICE IS PROVIDED.
2. DOES NOT INVALIDATE OR PREVENT THE DEPARTMENT FROM EXPANDING THE
   USE OF THE EASEMENT OR PROPERTY RIGHT AS OTHERWISE DESCRIBED IN THIS
   SECTION.

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M. COMPENSATION PROVIDED BY THIS SECTION SHALL BE PAID FROM THE SMART HIGHWAY CORRIDOR TRUST FUND ESTABLISHED BY SECTION 28-7387.

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

28-7383. Management of state-owned telecommunication facilities

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

28-7384. Longitudinal telecommunication access in the highway system; agreements; restrictions; rulemaking

A. EXCEPT AS PROVIDED IN SUBSECTION E OF THIS SECTION, THE DEPARTMENT MAY ALLOW A PROVIDER LONGITUDINAL ACCESS TO THE RIGHT-OF-WAY OF A HIGHWAY FOR THE INSTALLATION, OPERATION AND MAINTENANCE OF A TELECOMMUNICATION FACILITY.

B. THE DEPARTMENT SHALL ENTER INTO AN AGREEMENT WITH A PROVIDER AND ISSUE A PERMIT BEFORE GRANTING THE PROVIDER ANY LONGITUDINAL ACCESS UNDER THIS SECTION.

C. EXCEPT AS SPECIFICALLY PROVIDED BY THE AGREEMENT, A PROPERTY INTEREST IN A RIGHT-OF-WAY MAY NOT BE GRANTED UNDER THIS SECTION.

D. AN AGREEMENT ENTERED INTO BY THE DEPARTMENT UNDER THIS SECTION SHALL:

1. SPECIFY THE TERMS AND CONDITIONS FOR RENEGOTIATING THE AGREEMENT.

2. SPECIFY MAINTENANCE RESPONSIBILITIES FOR EACH TELECOMMUNICATION FACILITY.

3. BE NONEXCLUSIVE.

4. BE LIMITED TO A MAXIMUM TERM OF THIRTY YEARS.

E. THE DEPARTMENT MAY NOT GRANT ANY LONGITUDINAL ACCESS UNDER THIS SECTION THAT RESULTS IN A SIGNIFICANT COMPROMISE OF THE SAFE, EFFICIENT AND CONVENIENT USE OF THE HIGHWAY FOR THE TRAVELING PUBLIC.

F. THE DIRECTOR SHALL ADOPT RULES THAT:

1. GOVERN THE INSTALLATION, OPERATION AND MAINTENANCE OF A TELECOMMUNICATION FACILITY GRANTED LONGITUDINAL ACCESS UNDER THIS SECTION.

2. SPECIFY THE PROCEDURES FOR ESTABLISHING AN AGREEMENT FOR LONGITUDINAL ACCESS FOR A PROVIDER.

3. PROVIDE FOR THE RELOCATION OR REMOVAL OF A TELECOMMUNICATION FACILITY FOR ANY OF THE FOLLOWING:

(a) NEEDED CHANGES TO A HIGHWAY.

(b) EXPIRATION OF AN AGREEMENT.

(c) BREACH OF AN AGREEMENT.
Longitudinal telecommunication access to highway system right-of-way; compensation

A. THE DEPARTMENT SHALL REQUIRE COMPENSATION FROM A PROVIDER FOR LONGITUDINAL ACCESS TO THE RIGHT-OF-WAY OF A STATE HIGHWAY. THE COMPENSATION SHALL BE ALL OF THE FOLLOWING:
1. FAIR AND REASONABLE.
2. COMPETITIVELY NEUTRAL.
3. NONDISCRIMINATORY.
4. OPEN TO PUBLIC INSPECTION.
5. ESTABLISHED TO PROMOTE ACCESS BY MULTIPLE PROVIDERS.
6. ESTABLISHED FOR ZONES OF THIS STATE.
7. ESTABLISHED TO ENCOURAGE THE DEPLOYMENT OF DIGITAL INFRASTRUCTURE WITHIN THIS STATE.
8. A LUMP SUM PAYMENT OR ANNUAL INSTALLMENT, AT THE OPTION OF THE PROVIDER.
9. SET PURSUANT TO SUBSECTION I OF THIS SECTION.
B. THE COMPENSATION MAY BE CASH, IN-KIND COMPENSATION OR A COMBINATION OF CASH AND IN-KIND COMPENSATION.
C. IN-KIND COMPENSATION REQUIRES THE AGREEMENT OF BOTH THE PROVIDER AND THE DEPARTMENT.
D. THE DEPARTMENT SHALL DETERMINE THE PRESENT VALUE OF ANY IN-KIND COMPENSATION BASED ON THE INCREMENTAL COST TO THE PROVIDER.
E. THE VALUE OF IN-KIND COMPENSATION OR A COMBINATION OF CASH AND IN-KIND COMPENSATION SHALL BE EQUAL TO OR GREATER THAN THE AMOUNT OF CASH COMPENSATION THAT WOULD BE CHARGED IF THE COMPENSATION IS CASH ONLY.
F. THE DEPARTMENT SHALL PROVIDE FOR THE PROPORTIONATE SHARING OF COSTS AMONG THE DEPARTMENT AND PROVIDERS FOR JOINT TRENCHING OR TRENCH SHARING BASED ON THE AMOUNT OF CONDUIT INNERDUCT SPACE THAT IS AUTHORIZED IN THE AGREEMENT FOR THE TRENCH.
G. IF TWO OR MORE PROVIDERS ARE REQUIRED TO SHARE A SINGLE TRENCH, EACH PROVIDER IN THE TRENCH SHALL SHARE THE COST AND BENEFITS OF THE TRENCH PURSUANT TO SUBSECTION F OF THIS SECTION ON A FAIR, REASONABLE, COMPETITIVELY NEUTRAL AND NONDISCRIMINATORY BASIS.
H. THE DEPARTMENT, BY RULE, SHALL ESTABLISH A SCHEDULE OF RATES OF COMPENSATION FOR ANY LONGITUDINAL ACCESS GRANTED UNDER THIS SECTION.
I. THE DEPARTMENT MAY NOT PAY ANY COST OF RELOCATION OF A PRIVATE TELECOMMUNICATION FACILITY GRANTED LONGITUDINAL ACCESS TO THE RIGHT-OF-WAY OF A HIGHWAY ON THE INTERSTATE SYSTEM UNDER THIS SECTION.
J. THE DEPARTMENT SHALL DEPOSIT, PURSUANT TO SECTIONS 35-146 AND 35-147, MONIES COLLECTED PURSUANT TO THIS SECTION IN THE SMART HIGHWAY CORRIDOR TRUST FUND ESTABLISHED BY SECTION 28-7387.
K. ANY TELECOMMUNICATIONS CAPACITY ACQUIRED AS IN-KIND COMPENSATION SHALL BE USED EXCLUSIVELY FOR THE FURTHER DEVELOPMENT OF TELECOMMUNICATIONS THAT SERVE STATE AGENCIES AND ENHANCE CONNECTIVITY FOR
HIGHER AND PUBLIC EDUCATION AND MAY NOT BE SOLD OR LEASED IN COMPETITION WITH TELECOMMUNICATION OR INTERNET SERVICE PROVIDERS.

L. A PERSON MAY NOT USE COMPENSATION PAID TO THE DEPARTMENT PURSUANT TO THIS SECTION AS EVIDENCE OF THE MARKET OR OTHER VALUE OF THE ACCESS FOR ANY OTHER PURPOSE, INCLUDING CONDEMNATION PROCEEDINGS, OTHER LITIGATION, THE APPLICATION OF RATES OF TAXATION OR THE ESTABLISHMENT OF FRANCHISE FEES RELATING TO LONGITUDINAL ACCESS RIGHTS.

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

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

1. DETERMINES THE SPARE CONDUIT AND RELATED FACILITIES ARE NOT NEEDED FOR HIGHWAY PURPOSES.
2. RECEIVES FAIR COMPENSATION FOR THE USE OF AND ACCESS TO THE SPARE CONDUIT AND RELATED FACILITIES.
3. OFFERS SUCH USE AND ACCESS IN A COMPETITIVELY NEUTRAL AND NONDISCRIMINATORY MANNER AS TO ALL SIMILARLY SITUATED PROVIDERS.

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

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

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

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

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

G. THIS SECTION DOES NOT REQUIRE THE DEPARTMENT TO RECEIVE COMPENSATION FROM ANY BUDGET UNIT OF THIS STATE FOR USE OF AND ACCESS TO CONDUIT AND RELATED FACILITIES.

28-7387. Smart highway corridor trust fund; purpose

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

1. LEGISLATIVE APPROPRIATIONS.
2. Monies received from the sales or leases of rights-of-way, telecommunication facilities and telecommunication services pursuant to sections 28-7385 and 28-7386.

3. Monies received from providers to reimburse costs for compensation claims pursuant to section 28-7382.

B. Monies in the Smart Highway Corridor Trust Fund shall be used for the following:

1. The maintenance, operation and expansion of telecommunication facilities and telecommunication services within rights-of-way that are managed by the department.

2. The payment of compensation pursuant to section 28-7382.

C. The Department shall administer the Fund. Monies in the Fund are continuously appropriated. Monies in the Fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

D. On notice from the Department, the State Treasurer shall invest and divest monies in the Fund as provided by section 35-313, and monies earned from investment shall be credited to the Fund.

Sec. 6. Exemption from rulemaking

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

APPROVED BY THE GOVERNOR MAY 10, 2021.