ARIZONA STATE SENATE
Fifty-Fifth Legislature, First Regular Session

AMENDED
FACT SHEET FOR H.B. 2596

ADOT; telecommunication facilities installation

Purpose

Authorizes the installation of telecommunication facilities in a highway right-of-way by the Arizona Department of Transportation (ADOT) or a broadband service provider (provider) with permission from ADOT.

Background

ADOT is currently allowed to install a broadband conduit as part of a covered rural highway construction project if funding is received to cover the cost of the project. A broadband conduit may be leased to a provider at a cost-based rate, and ADOT may coordinate with providers regarding planning and relocating of broadband conduit and any related provider facilities within the right-of-way at the provider's expense if future highway improvements make the relocations necessary. The Director of ADOT (Director) may limit access to any broadband facilities within the right-of-way for initial installation and maintenance purposes and may take other actions necessary to maintain highway safety. The Director may install a broadband conduit without regard to the timing of a related existing construction project, based on a request and receipt of funding from state entities charged with responsibility for broadband infrastructure and policy (A.R.S. § 28-7382).

*Broadband conduit* is currently defined as a conduit, innerduct or microduct for fiber optic cables that support broadband and wireless facilities for broadband service (A.R.S. § 28-7381).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

*Telecommunication Facilities Authorization*

1. Allows ADOT to 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 related to planning, mapping and procuring broadband services in Arizona.

2. Allows the Director or a provider with permission from ADOT to install telecommunication facilities.

3. Allows the Director to lease telecommunication facilities to providers and coordinate with providers regarding planning or relocating a facility.
4. Stipulates that the installation of telecommunication facilities need not be part of a covered rural highway construction project or based on a request and receipt of funding from state entities responsible for broadband infrastructure.

5. Stipulates that the lease of telecommunication facilities need not be done at a cost-based rate, and that planning relating to the relocation of a facility need not be conditioned on if future highway improvements make facility relocation necessary.

6. States that statutory procedures and restrictions relating to the lease of areas above and below highways do not apply to the use of highway rights-of-way for telecommunication facility installation.

**Longitudinal Telecommunication Access**

7. Allows ADOT to grant a provider longitudinal access to the right-of-way of a highway for the installation, operation and maintenance of a telecommunication facility.

8. Requires ADOT to enter into an agreement with a provider and issue a permit before granting longitudinal access.

9. Prohibits ADOT from granting any longitudinal access that results in the significant compromise of the safe, efficient and convenient use of the highway.

10. Stipulates that a property interest may not be granted except as provided by an agreement.

11. Requires an agreement entered into by ADOT to:
    a) specify the terms and conditions for renegotiating the agreement;
    b) specify maintenance responsibilities for each telecommunication facility;
    c) be nonexclusive; and
    d) be limited to a maximum of 30 years.

12. Requires the Director to adopt rules that:
    a) govern the installation, operation and maintenance of a telecommunication facility granted longitudinal access;
    b) specify the procedures for establishing an agreement for longitudinal access for a provider; and
    c) provide for the relocation or removal of a telecommunication facility due to necessary changes to a highway, expiration of the agreement or a breach of the agreement.

**Compensation for Longitudinal Telecommunication Access**

13. Requires ADOT to collect compensation from a provider for longitudinal access to the right-of-way of a state highway, and outlines requirements that the compensation must meet.

14. Specifies that the compensation may be cash, in-kind compensation or a combination of both.

15. Stipulates that in-kind compensation requires the agreement of both ADOT and the provider.
16. Requires ADOT to determine the present value of any in-kind compensation based on the incremental cost to the provider.

17. Requires the amount of in-kind compensation to be equal to or greater than the value of cash compensation that would be charged.

18. Requires ADOT to provide for the proportionate sharing of costs among ADOT and providers for joint trenching or trench sharing based on the amount of conduit innerduct space authorized in the agreement.

19. Requires providers, if two or more providers share a single trench, to share the costs and benefits of the trench.

20. Requires ADOT to establish a schedule of rates of compensation for any longitudinal access by rulemaking.

21. Prohibits ADOT from paying any cost of relocation of a private telecommunication facility granted longitudinal access.

22. Requires ADOT to deposit monies collected from longitudinal access agreements in the Smart Highway Corridor Trust Fund (Fund).

23. Requires telecommunications capacity acquired as in-kind compensation to be used exclusively for developing telecommunications that serve state agencies and enhance connectivity for higher and public education.

24. Prohibits in-kind telecommunication capacity compensation from being sold or leased in competition with telecommunication or internet service providers.

25. Prohibits a person from using compensation paid to ADOT as evidence of value of the access for any other purpose, including:
   a) condemnation proceedings;
   b) other litigation;
   c) the application of rates of taxation; or
   d) the establishment of franchise fees relating to longitudinal access rights.

   Access to State-Owned Conduits

26. Allows ADOT to offer a provider use of and access to its spare conduits and related telecommunication facilities if ADOT:
   a) determines the spare conduit and related facilities are not needed for highway purposes;
   b) receives fair compensation of the use of and access to the spare conduit and related activities; and
   c) offers such use and access in a competitively neutral and nondiscriminatory manner.

27. Requires ADOT to establish rates of compensation for the use of and access to its spare conduits to ensure fair compensation is received for the value of the conduits.

28. Requires any compensation to be set forth in an agreement between ADOT and the provider.
29. Requires ADOT to determine the annual compensation to be paid by each provider for the use of its conduits based on the present value of the estimated and reasonable cost of trenching to place the conduit, fiber and other related telecommunication facilities.

30. Allows ADOT to accept in-kind compensation for the use of and access to its spare conduits and related telecommunication facilities in accordance with prescribed valuation procedures.

31. Requires ADOT to deposit monies collected from access to spare conduits in the Fund.

32. Specifies that ADOT is not required to receive compensation from any budget unit of Arizona for use of and access to conduit and related telecommunication facilities.

Compensation for Land Value Diminution

33. States that a property owner is entitled to just compensation from ADOT or a provider if ADOT expands the use of an existing easement or other property right in order to install or operate a telecommunication facility and the expanded use reduces the fair market value of the property over which the easement or other property right runs.

34. Requires a property owner to commence an action in the superior court for just compensation not later than 18 months after the date ADOT provides notice of the expanded use.

35. Specifies that notice is considered provided if sent by first class mail to the last known address of the property owner.

36. Requires a court to ascertain the diminution in market value based on the difference between the fair market value of the entire parcel immediately before and immediately after the expanded use.

37. Specifies that evidence of revenues or profits derived from, or the rental value of, an assembled communications corridor are not admissible in determining fair market value.

38. Deems the expanded use fully vested in ADOT upon payment of just compensation.

39. Requires the expanded use to run with the land.

40. Specifies that actions for just compensation include trespass, inverse condemnation and other similar causes of action.

41. States that ADOT or a provider is not prohibited from reaching an agreement with a property owner to waive a claim for just compensation or from acquiring the right to use the property by other lawful means.

42. Requires a provider, prior to an excavation to install fiber optic cable or other underground telecommunication facilities within an existing easement or other property right, to give written notice to the property owner.

43. Requires a provider to send the notice by first class mail to the last known address of the property owner.
44. Requires the notice to include:
   a) the name and mailing address of the provider;
   b) the mailing address, telephone number and email address of a representative of the provider;
   c) a summary statement describing the activities to be conducted during the excavation; and
   d) the approximate start and end dates of the excavation.

45. Specifies that notice is not required before the provider may use an easement or other property right that includes an authorization for excavation to install a telecommunication facility.

46. States that failure to provide the notice prohibits a provider from proceeding with an excavation until the notice is provided, but does not invalidate or prevent ADOT from expanding the use of an easement or other property right as otherwise described.

47. Requires compensation for diminution in value resulting from expanded use of an easement or other property right to be paid from the Fund.

   **Smart Highway Corridor Trust Fund**

48. Establishes the Fund consisting of:
   a) legislative appropriations;
   b) monies received from the sale or lease of rights-of-way, telecommunication facilities and telecommunication services; and
   c) monies received from providers to reimburse costs for compensation claims.

49. Requires monies in the Fund to be used for:
   a) the maintenance, operation and expansion of telecommunication facilities and telecommunication services within rights-of-way that are managed by ADOT; and
   b) payment of compensation for the diminution in value of an easement or other property right.

50. Requires ADOT to administer the Fund.

51. Specifies that monies in the Fund are continuously appropriated and exempt from lapsing.

52. Requires the State Treasurer to invest and divest monies in the Fund on notice from ADOT.

   **Rulemaking**

53. Exempts ADOT from rulemaking requirements for one year after the effective date of this act for the purposes of this act.

   **Definitions**

54. Defines *longitudinal access* as 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 30 or more linear meters.
55. Defines *telecommunication facility* as 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, wireline, electronic or optical signal for communication purposes.

56. Modifies the definition of *provider* to include a video service provider.

57. Modifies the definition of *broadband service*.

58. Removes the definitions of *broadband conduit*, *cost-based rate*, *covered rural highway construction project* and *rural highway*.

**Miscellaneous**

59. Makes technical and conforming changes.

60. Becomes effective on the general effective date.

**Amendments Adopted by Committee**

- Modifies the definition of *telecommunication facility*.

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<th>Senate Action</th>
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<td>TRANS 2/10/21 DP 12-0-0-0</td>
<td>TAT 3/15/21 DPA 9-0-0</td>
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<td>3rd Read 3/1/21 52-0-8</td>
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Prepared by Senate Research

March 16, 2021

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