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

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

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

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

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

1. The construction, installation, maintenance, modification, operation or replacement of utility poles or monopoles.

2. The collocation of small wireless facilities on utility poles or wireless support structures.

3. The collocation of wireless facilities on monopoles.

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

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

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

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

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

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

3. Be unreasonable or discriminatory.

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

E. An authority shall establish and make available rates, fees and terms for all of the following, within six months after August 9, 2017 or
three months after receiving the first request by a wireless provider, whichever is later:

1. The construction, installation, mounting, maintenance, modification, operation or replacement of CONSTRUCTING, INSTALLING, MOUNTING, MAINTAINING, MODIFYING, OPERATING OR REPLACING a utility pole or monopole by a wireless provider in a right-of-way.
2. The collocation of COLLOCATING a small wireless facility by a wireless provider in a right-of-way.
3. The collocation of COLLOCATING a wireless facility on or within a monopole by a wireless provider in a right-of-way.

F. The rates, fees and terms established pursuant to subsection E of this section must be made available for acceptance by a wireless provider. At the wireless provider's option, a wireless provider may request different or additional terms that the parties shall negotiate in good faith. Documents that reflect rates, fees and terms with each wireless provider are public records. Rates, fees and terms must comply with this article, and the terms:
   1. May not be unreasonable or discriminatory.
   2. May include requirements applicable to other users of the right-of-way.
   3. May require that the wireless provider's operation of the small wireless facilities in the right-of-way does not interfere with the authority's public safety communications.
4. Subject to subsection K of this section and section 9-593, subsection L, may not require the placement of small wireless facilities on any specific utility pole or category of poles or require multiple antenna systems on a single utility pole.
5. Subject to subsection K of this section and section 9-593, subsection L, may not limit the placement of small wireless facilities by minimum separation distances.

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

H. Subject to this section and the approval of an application, if required, a wireless provider may do any of the following:
   1. Collocate small wireless facilities.
   2. Construct, install, modify, mount, maintain, operate and replace utility poles that are associated with the collocation of COLLOCATING small wireless facilities along, across, on and under the right-of-way.
3. Construct, install, modify, mount, maintain, operate and replace monopoles that are associated with the collocation of COLLOCATING wireless facilities along, across, on and under the right-of-way. The installation, modification and replacement of monopoles are subject to review under section 9-594 regardless of the height of the monopole.

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

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

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

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

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

1. Applicable codes.
2. Local code provisions or regulations that concern any of the following:
   (a) Public safety.
   (b) Objective design standards and reasonable stealth and concealment requirements.
   (c) Undergrounding requirements that prohibit the installation of INSTALLING new or the modification of MODIFYING existing utility poles or monopoles in a right-of-way without prior approval, if such requirements include a waiver, zoning or another process that addresses requests to install such new utility poles or monopoles or modify such existing
utility poles or monopoles and do not prohibit the replacement of utility poles or monopoles.

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

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

5. SUBSECTION K OF THIS SECTION.

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

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

O. Approval of an application by an authority authorizes the applicant to do both of the following:
   1. Undertake the requested deployment.
   2. Subject to applicable relocation requirements, the authority's terms as described in this section and the wireless provider's right to terminate at any time, operate and maintain the wireless provider's new, modified or replacement utility pole for a period of not less than ten years, which must be renewed for equivalent durations unless the authority makes a finding that the new or modified utility pole does not comply with the requirements described in subsection L of this section.

P. An authority may require a wireless provider to repair all damage to the authority's property and the right-of-way that is caused by the activities of the wireless provider or the wireless provider's contractor while occupying, installing, repairing or maintaining small wireless facilities, wireless support structures or utility poles in the right-of-way and to return the damaged property to the same condition as before the damage pursuant to the competitively neutral, reasonable requirements and specifications of the authority. If the wireless provider fails to make the repairs required by the authority within a reasonable time after the authority provides written notice to the wireless provider, the authority may make the repairs and charge the applicable party the reasonable, documented cost of the repairs.
This article does not relieve a wireless provider from any applicable requirement to obtain a franchise, license or other permission to provide communications service or to install, place, maintain or operate facilities or structures that are not authorized by this article in the right-of-way to provide a communications service.

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

9-593. Applicability; collocation of small wireless facilities; permits; application; fee
A. This section applies to the activities of a wireless provider within a right-of-way.
B. Except as provided in this section and sections 9-592, 9-594, 9-595, 9-597, 9-598 and 9-599, as applicable, an authority may not prohibit, regulate or charge for the collocation of small wireless facilities.
C. Subject to this section and section 9-592, subsection J, a small wireless facility is classified as a permitted use and is not subject to zoning review or approval if the small wireless facility is collocated in a right-of-way in any zone.
D. NOTWITHSTANDING ANY OTHER LAW, BEFORE COLLOCATING A SMALL WIRELESS FACILITY IN A RESIDENTIAL AREA, THE WIRELESS PROVIDER SHALL OBTAIN WRITTEN AUTHORIZATION FROM AT LEAST EIGHTY PERCENT OF THE SINGLE-FAMILY HOMEOWNERS WITHIN A ONE-HALF-MILE RADIUS OF THE PROPOSED LOCATION OF THE SMALL WIRELESS FACILITY. THE WRITTEN AUTHORIZATION SHALL BE PROVIDED TO THE AUTHORITY WITH ANY APPLICATION THAT IS REQUIRED UNDER THIS SECTION.
E. An authority may require an applicant to obtain one or more permits to collocate a small wireless facility if the permit requirement is of general applicability and does not apply exclusively to wireless facilities. An applicant seeking to collocate multiple small wireless facilities within the jurisdiction of a single authority may file a consolidated application for the collocation of up to twenty-five small wireless facilities if the collocations each involve substantially the same type of small wireless facilities and substantially the same type of structure.
F. An application must include an attestation that the small wireless facilities will be collocated on the utility pole or wireless support structure and that the small wireless facilities will be operational for use by a wireless services provider to provide service within one hundred eighty days after the permit issuance date, unless the authority and the wireless provider agree to extend this period or a delay is caused by a lack of commercial power at the site.
G. An authority:
1. Shall accept applications for, process and issue permits to collocate small wireless facilities.
2. Within twenty days after receiving an application, shall determine and notify the applicant whether the application is complete. If an applicant is not notified within the twenty-day period, the application is deemed complete. If an application is incomplete, the authority must specifically identify the information missing from the application.

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

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

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

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

G. H. An authority may not:

1. Directly or indirectly require an applicant to perform services that are unrelated to the collocation for which approval is sought, such as in-kind contributions to the authority, including reserving fiber, conduit or pole space on the wireless provider's monopole or utility pole for the authority.
2. EXCEPT AS PROVIDED IN SUBSECTION D OF THIS SECTION, require an applicant to provide more information to obtain a permit than the authority requires of a communications service provider that is not a wireless provider and that requests to attach facilities to a structure. An authority may require the applicant to certify that the small wireless facilities to be collocated comply with the federal communications commission's regulations concerning radio frequency emissions referenced in 47 United States Code section 332(c)(7)(B)(iv).

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

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

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

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

1. Collocate the small wireless facilities.

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

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

1. Third-party travel expenses that are incurred to review an application.
2. The direct payment or reimbursement of third-party rates or fees that are charged on a contingency basis or pursuant to a result-based arrangement.

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

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

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

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

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

1. The installation of new monopoles, utility poles or wireless facilities.

2. The collocation of wireless facilities.

B. Notwithstanding any provision in this article to the contrary, the construction, installation, maintenance, modification, operation or replacement of a monopole or associated wireless facility in a right-of-way is subject to all of the authority's codes and regulations, including the authority's zoning codes and other regulatory processes governing use of the rights-of-way.

C. An authority shall:

1. Accept and process applications for the modification of existing or the installation of new monopoles, utility poles or wireless facilities and the collocation of wireless facilities.

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

3. Process each complete application on a nondiscriminatory basis. A complete application is deemed approved if the authority fails to approve or deny the application within one hundred fifty days after receipt of an application for the modification of existing or the installation of new monopoles, utility poles or wireless facilities.
facilities or within ninety days after receipt of a complete application for the collocation of COLLOCATING wireless facilities. The time period for approval may be tolled to accommodate timely requests for information required to complete the application or may be extended by mutual agreement between the applicant and authority.

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

D. An authority may not:

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

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

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

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

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

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

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

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

F. An applicant's business decisions regarding the type and location of wireless facilities, monopoles or utility poles or the technology to be used are presumed to be reasonable. This presumption
does not apply to the height or appearance of wireless facilities, monopoles or utility poles. An authority may consider the height of such structures in the zoning or other regulatory review, provided that the authority does not unreasonably discriminate between the applicant and other communications service providers that install wireless facilities.

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