



ARIZONA HOUSE OF REPRESENTATIVES

Fifty-fifth Legislature
First Regular Session

HB 2596: ADOT; telecommunication facilities installation

Sponsor: Representative Cobb, LD 5

Committee on Transportation

Overview

Authorizes the installation of telecommunication facilities within the right-of-way of a highway by ADOT or a provider with permission from ADOT.

History

Pursuant to [A.R.S. § 28-7382](#), ADOT is allowed to install broadband conduit as part of a covered rural highway construction project if funding is received by the department to cover the cost.

ADOT is allowed to lease the broadband conduit to providers at a cost-based rate and 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. ADOT may limit provider access to any broadband 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.

ADOT is allowed to install broadband conduit 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.

Provisions

Telecommunication facility installation and management (Sec. 4-5)

1. Allows ADOT or a provider with permission from ADOT to install telecommunication facilities.
2. Allows ADOT to lease a telecommunication facility to providers and coordinate with providers regarding or relocating of a telecommunication facility and any related provider telecommunication facilities within the right-of-way at the provider's expense.
3. Allows ADOT to limit provider access to any telecommunication facilities within the right-of-way for installation and infrequent access for maintenance purposes.
4. Allows ADOT or a provider with permission from ADOT to install a telecommunication facility without regard to the timing of a related existing road construction project.
5. States that for the purpose of installing and operating a telecommunication facility a property owner is entitled to just compensation from ADOT or a provider if:
 - a) ADOT, directly or through a provider, expands the use of an existing easement or other property right that is owned, held or used by ADOT for transportation purposes; and
 - b) The expanded use reduces the fair market value of the property owner which the easement or other property right runs.

Prop 105 (45 votes)

Prop 108 (40 votes)

Emergency (40 votes)

Fiscal Note

6. Requires the property owner to commence an action in the superior court for just compensation based on diminution in value not later than 18 months after the date ADOT provides notice to the property owner of the expanded use.
7. Directs the notice ADOT provides the property owner of the expanded use be sent by first class mail to the last know address of the property owner.
8. States that all of the following apply in an action for just compensation based on a claim of expanded use for instillation of a telecommunication facility:
 - a) The court or jury must ascertain and assess the diminution 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;
 - b) Evidence of revenues or profits derived from or the rental value of an assembled communications corridor are not admissible in determining fair market value; and
 - c) The expanded use is deemed fully vested in ADOT and the expanded use must run with the land, on payment of just compensation.
9. Prohibits a class action from being maintained against ADOT or a provider in any action for just compensation based on a claim of expanded use for the installation of a telecommunication facility.
10. States that actions for just compensation include trespass, inverse condemnation and other similar causes of action.
11. States that ADOT or a provider is not prohibited 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.
12. Requires a provider to provide written notice to the property owner of the expanded use for installation of a telecommunication facility before excavation, if the excavation is required to install fiber optic cable or other underground facilities within an existing easement or other property right owned, held or used by ADOT for transportation purposes.
13. Requires the provider to send notice to the property owner before the excavation that includes:
 - 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 dates when the excavation will start and end.
14. States the notice is not required before the provider is allowed to use an easement or other property right that includes an authorization for excavation for the purpose of installing a telecommunication facility.
15. Stipulates that failure to provide the notice:
 - a) Prohibits the provider from proceeding with an excavation until the notice is provided; and
 - b) Does not invalidate or prevent ADOT from expanding the use of the easement or property right.
16. Allows ADOT to enter into an agreement with a public or private entity for the purpose of:
 - a) Using, managing or operating state-owned telecommunication facilities; and
 - b) Coordinating activities in Arizona relating to planning, mapping and producing broadband service.

Longitudinal Telecommunication Access (Sec. 5)

17. Allows ADOT to allow a provider longitudinal access to the right-of-way of a highway for the installation, operation and maintenance of a telecommunication facility.
18. Requires ADOT to enter into an agreement with a provider and issue a permit before granting the provider any longitudinal access.
19. States that a property interest in a right-of-way may not be granted, except as specifically provided by the agreement.
20. 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 term of 30 years.
21. Prohibits ADOT from granting any longitudinal access that results in a significant compromise of the safe, efficient and convenient use of the interstate system for the traveling public.
22. Requires ADOT 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 for needed changes to a highway, expiration of an agreement and breach of an agreement.

Longitudinal Telecommunication Access Compensation (Sec. 5)

23. Directs ADOT to require compensation from a provider for longitudinal access to the right-of-way of a state highway.
24. Requires the compensation to be all of the following:
 - a) Fair and reasonable;
 - b) Competitively neutral;
 - c) Nondiscriminatory;
 - d) Open to public inspection;
 - e) Established to promote access by multiple providers;
 - f) Established for zones of Arizona;
 - g) Established to encourage the deployment of digital infrastructure within Arizona;
 - h) Set after ADOT conducts a market analysis to determine the fair and reasonable values of the right-of way;
 - i) A lump sum payment of annual installment, at the option of the provider; and
 - j) Set pursuant to an established schedule of rates.
25. Allows the compensation to be cash, in-kind compensation or a combination of both.
26. States that in-kind compensation requires the agreement of both the provider and ADOT.
27. Requires ADOT to determine the present value of any in-kind compensation based on the incremental cost to the provider.
28. Requires the value of in-kind compensation or a combination of cash and in-kind compensation to be equal to or greater than the amount of cash compensation that would be charged if the compensation is cash only.

29. Requires ADOT to provide for the proportional 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.
30. Requires each provider in the trench, if there are two or more providers required to share a single trench, to share the cost and benefits of the trench on a fair, reasonable, competitively neutral and nondiscriminatory basis.
31. Requires ADOT to conduct the aforementioned market analysis to determine the fair and reasonable values of right-of-way and apply any necessary adjustments only to agreements entered after the date of the new market analysis.
32. Requires ADOT to establish by rules a schedule of rates of compensation for any longitudinal access granted.
33. State that ADOT 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.
34. Requires ADOT to deposit monies collected in the Smart Highway Corridor Trust Fund (Fund).
35. Requires any telecommunication capacity acquired as in-kind compensation to be used exclusively for the further development of telecommunications that serve state agencies and enhance connectivity for higher and public education.
36. States that any telecommunication capacity acquired as in-kind compensation may not be sold or leased in competition with telecommunication or internet service providers.
37. Stipulates that a person may not use compensation paid to ADOT as evidence of the market or other value of the access for any other purpose that include:
 - 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.

Use and Access to State-owned Conduit (Sec. 5)

38. Allows ADOT to offer a provider use of and access to its spare conduit and related facilities if the department does all of the following:
 - a) Determines the spare conduit and related facilities are not needed for highway purposes;
 - b) Receives fair compensation for the use of and access to the spare conduit and related facilities;
 - c) Offers such use and access in a competitively neutral and nondiscriminatory manner as to all similarly situated providers.
39. Requires ADOT to 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 facilities.
40. Stipulates that the compensation must be fair and reasonable and charged in a competitively neutral and nondiscriminatory manner to all similarly situated providers.
41. States that the compensation must be set forth in an agreement entered into between ADOT and the provider.
42. Requires ADOT to do both of the following:
 - a) 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;

- b) Conduct an analysis every five years to determine if there are any changes in the value of its spare conduit and related facilities and apply the new values to each newly executed agreement if it is determined that the value of the spare conduit or related facilities has change.
- 43. Allows ADOT to accept in-kind compensation for the use of and access to its spare conduit and related facilities in accordance with the valuation procedures prescribed for longitudinal telecommunication access compensation.
- 44. Requires ADOT to deposit monies collected in the Fund.

Smart Highway Corridor Trust Fund (Sec. 5)

- 45. Establishes the Fund consisting of the following:
 - a) Legislative appropriations; and
 - b) Monies received from the sale or lease of right-of-way, telecommunication facilities and telecommunication services.
- 46. Requires monies in the Fund to be used for the maintenance, operation and expansion of telecommunication facilities and telecommunication services within right-of-way that are managed by ADOT.
- 47. Requires ADOT to administer the Fund.
- 48. States that monies in the Fund are continuously appropriated and exempt from lapsing.
- 49. Requires the State Treasurer, on notice from ADOT, to invest and divest monies in the Fund.
 - a) Requires monies earned from investment to be credited to the Fund.

Miscellaneous

- 50. Exempts the use of highway right-of-way for telecommunication facility installation from statute relating to lease of areas above and below highways. (Sec. 1)
- 51. Exempts ADOT from rulemaking requirements for one year after the effective date of this act. (Sec. 6)
- 52. Defines *longitudinal access* as access to or use of any part of a right-of-way of a highway on the interstate system that extends generally parallel to the right-of-way for a total of 30 or more linear meters. (Sec. 3)
- 53. Defines *telecommunication facility* as any telecommunication 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. (Sec. 3)
- 54. Makes technical and conforming changes (Sec. 2-4)