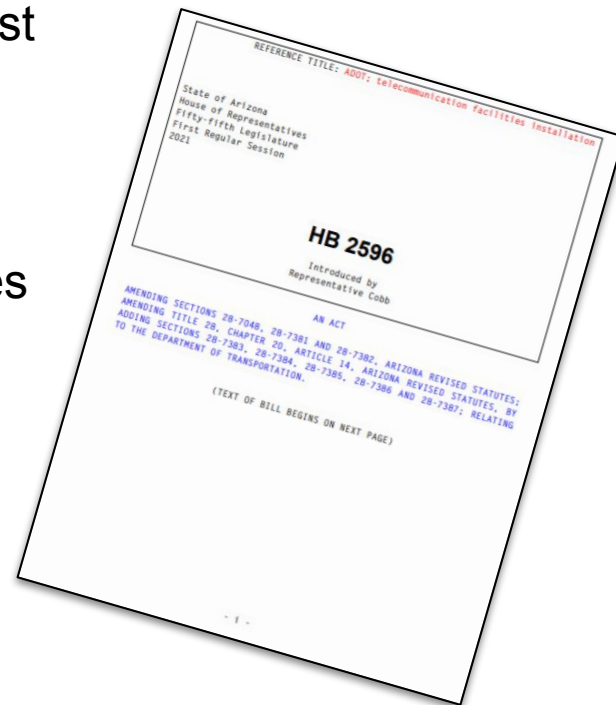
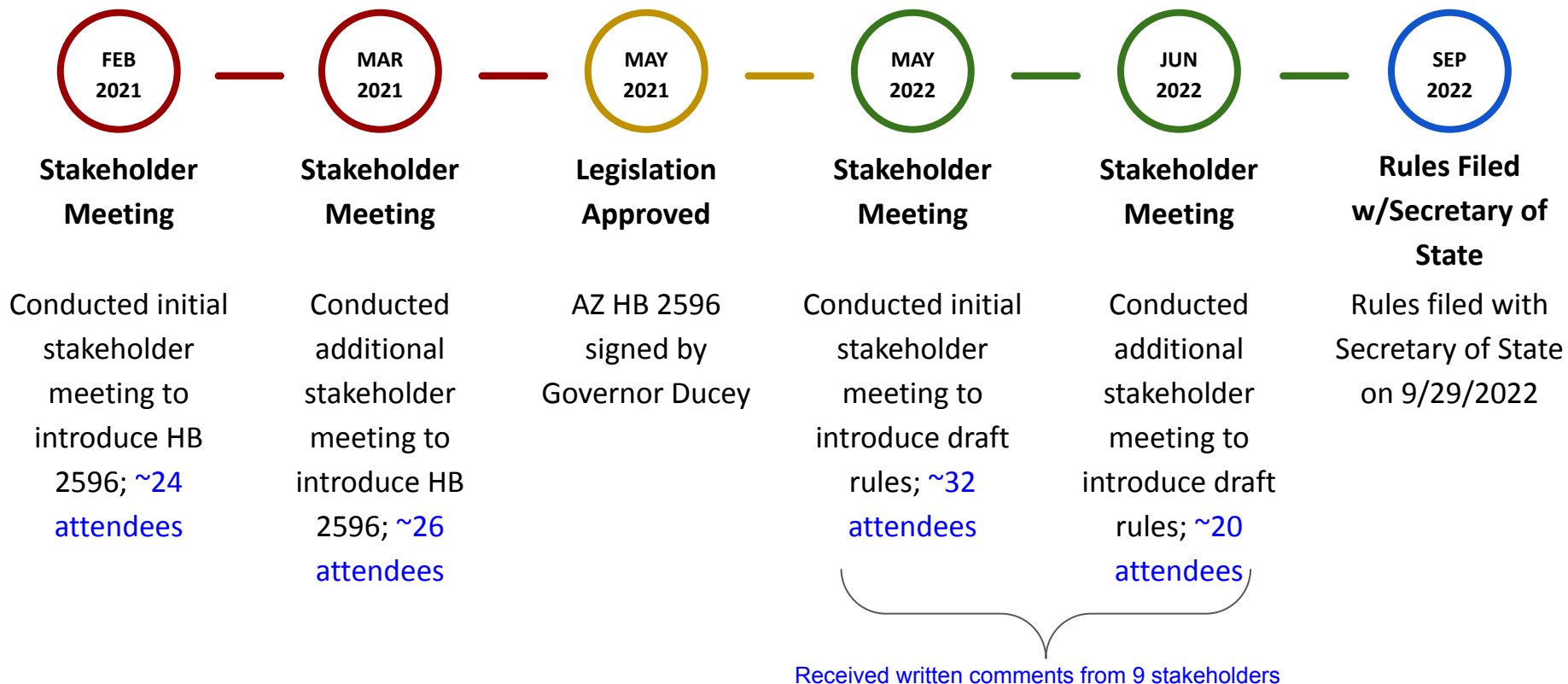


- **AZ HB 2596 - Summary**

- 28-7382: Rights of Way: Private Easements & Just Compensation
- 28-7383: Public/Private Agreements for Managing/Operating Telecommunications Facilities
- 28-7384: Longitudinal Access
- 28-7385: R/W Compensation for Access
- 28-7386: Open Excess State-Owned Conduit for Commercial Use and Compensation
- 28-7387: Smart Highway Corridor Trust Fund





Note: Although exemption from rulemaking was granted, stakeholder engagement was conducted.

Original Language	Revised Language	Notes
<p>“New installation” means an initial installation on a highway right-of-way; the replacement of an existing telecommunication facility with that of a different type, capacity or design; or the replacement of an existing telecommunication facility at a new location on the right-of-way.</p> <p>Reference: A.A.C. R17-3-601.</p>	<p>“New installation” means an initial installation on a highway right-of-way except in the event of a relocation required by the Department.</p>	<p>The suggested change provides more clarity. In the event of an ADOT mandated relocation, the relocation would not be considered a “new installation” as long as its of equal scope.</p>
<p>“Provider” 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.</p> <p>Reference: Laws 2021, Chapter 351 (HB 2596).</p>	<p>N/A - The suggested change to modify the definition of “provider” was rejected.</p>	<p>The definition of “provider” is already established and defined in ARS (outside of these rules).</p>

Original Language	Revised Language	Notes
<p>Compensation shall be provided as one of the following options:</p> <ul style="list-style-type: none">- Annual- Lump-Sum- In-Kind- Combination <p>Reference: A.A.C. R17-3-602(G)(6).</p>	<p>The Department shall receive monetary compensation in the form of an annual or lump sum payment, unless an in-kind compensation or combination of in-kind and monetary compensation is agreed upon by the Department and the provider.</p>	<p>The suggested change requested “annual” as default payment. ADOT accepted but slightly revised the language provided. All four payment options are still available.</p>

Original Language	Revised Language	Notes
N/A - A suggested change was received to add additional language that did not originally exist.	<p>Terminating the telecommunication use and occupancy agreement due to removal of facilities from the right of way.</p> <p>For any monetary compensation, the provider shall receive a prorated refund based on the number of months remaining in the term agreement.</p> <p>For any in-kind compensation, the access to facilities or services provided will terminate at the time of the removal of the facilities.</p> <p>Reference: A.A.C. R17-3-602(H)(5).</p>	The suggested change provides a prorated refund in the event of removal of facilities.
<p>A description of the proposed work or activity in the right-of-way or facilities, which should include communities, industries, or both to be served by the provider; and</p> <p>Reference: A.A.C. R17-3-602 (B).</p>	<p>A description of the proposed work or activity in the right-of-way or facilities; and</p>	The suggested change requested for “industries and communities served” to be removed.

Original Language	Revised Language	Notes
<p>In accordance with Dig Once, the Department <u>may require</u> providers to adhere to Dig Once when installing telecommunication facilities into the same general location on the highway system and providers shall coordinate their planning and work, install in a joint trench, and equitably share costs</p> <p>Reference: A.A.C. R17-3-603(A)(4).</p>	<p>N/A - The suggested change to remove Dig Once was rejected.</p>	<p>FHWA (Federal Highway Administration) implemented new rules in March 2022 under the MOBILE NOW Act. 23 CFR § 645.307(a)(4) requires State Departments of Transportation to coordinate strategies to minimize repeated excavations.</p> <p>Highway rights-of-way are a valuable and finite resource and therefore must be managed properly.</p>
<p>The installation does not interfere with or impair the planned future expansion of the highway;</p> <p>The installation does not interfere with or impair planned future Department-owned telecommunication facilities projects;</p> <p>Reference: A.A.C. R17-3-602(A)(2) & (3).</p>	<p>N/A - The suggested change to remove these sentences was rejected.</p>	<p>The intent is to ensure proper conduit alignment to prevent future relocations due to a road widening or expansion. The ADOT Five-Year Construction plan is located here and details upcoming projects. This also prevents the risk of having two contractors performing construction activities in the rights-of-way at the same time.</p>

Original Language	Revised Language	Notes
<p>Cost per linear foot:</p> <p>Interstates: \$1.50/ft per year</p> <p>Controlled Access (non-Interstates): \$1.00/ft per year</p> <p>Non-Controlled Access: \$0.50/ft per year</p> <p>Reference: A.A.C. R17-3-602(G)(1).</p>	<p>Cost per linear foot:</p> <p>Interstates: \$1.00/ft per year</p> <p>Controlled Access (non-Interstates): \$0.50/ft per year</p> <p>Non-Controlled Access: \$0.25/ft per year</p>	<p>The suggested changes from stakeholders were to either reduce or eliminate the amounts. ADOT has reviewed and reduced the amounts.</p> <p>If a 20 or 30 year term is selected, the discount rate incentive is significant. The effective cost per linear foot becomes either \$0.28, \$0.14, or \$0.07 per linear foot, per year (based on the highway).</p>

Original Language	Revised Language	Notes
N/A	N/A	<p>A suggested change was requested for ADOT to be responsible for relocation costs in the event of a future highway project. The requested change is not within the authority or scope of this legislation. Current guidance for relocation of utilities can be found in the reference below.</p> <p>Reference: ADOTs Guideline for Accommodating Utilities on Highway Rights-of-Way (Section 1.1.3)</p>
N/A	N/A	<p>A suggested change was to apply a cost-based approach as opposed to using fair market value to determine the value of the rights-of-way. HB 2596 did not prescribe which method of valuation should be used such as cost-based, fair market value or other.</p> <p>This is not to be confused with the FCC's 2018 "Small Cell Order" which requires cost-based as opposed to fair market value, as that specifically pertains to <u>wireless</u> facilities.</p> <p>Reference: 47 U.S.C. §253 and 47 U.S.C. §332(c)7</p>

- Written Comments Received By:
 - Allo
 - Arcadian
 - AT&T
 - City of San Luis
 - Emery Telecom
 - SW Cable Communications Association
 - Verizon
 - Yuma County
 - Yuma EDC

Category	Question	Response	Section
Application Requirements	How will information contained in the application, but that is considered by the provider to be proprietary or confidential, be protected?	The permittee is responsible for asserting the document or specific information as confidential/sensitive information and may not be released to the public when requested as a public record. The permittee should provide the statutory authority which supports confidentiality.	R17-3-602
Application Requirements	What is the expected timeline for processing the Telecommunications Use and Occupancy Agreements?	The timeline for processing an application is 15 calendar days. This process can run parallel to the encroachment permit process.	R17-3-602
Definitions	New installation of telecommunication facilities is subject to the right-of-way (R/W) Compensation Rates. Is routine or emergency maintenance considered "new installation"?	No, the definition of "new installation" does not contain maintenance activities.	R17-3-601
Definitions	What is the definition of "new installation"?	"New installation" means an initial installation on a highway right-of-way except in the event of a relocation required by the Department.	R17-3-601

Category	Question	Response	Section
Definitions	What is the definition of "provider"?	<p>Pursuant to A.R.S. § 28-7381:</p> <p>(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.</p> <p>(b) Includes a video service provider as defined by section 11-1901.</p>	R17-3-601
Definitions	Will there be a new cost for existing telecommunication facilities in the ground?	Not for telecommunication facilities with an approved encroachment permit before the effective date established in the rules.	R17-3-601
Definitions	Are small wireless facilities or macro cell towers subject to the compensation rates?	No, unless new installations of longitudinal wired fiber optic is utilized to access the wireless equipment.	R17-3-601

Category	Question	Response	Section
Dig Once	Will providers be notified of Dig Once (i.e., joint-trench) opportunities?	Yes, in accordance with 23 CFR §645.307(a), each State Department of Transportation is required to establish a notification process that includes the State Transportation Improvement Plan (STIP), also known as the Five-Year Construction Program. Visit the "About Us" section of the ADOT Broadband Office website to sign up.	N/A
Dig Once	What is the rationale behind the Dig Once methodology?	In accordance with 23 CFR §645.307(a)(4), each State Department of Transportation is required to implement strategies that “minimize repeated excavations that involve broadband infrastructure”. ADOT retains the authority to manage the use of its right-of-way (R/W).	R17-3-603
Environmental	Can the Department provide environmental clearances (e.g., NEPA) for builds that cross federal agency lands?	Environmental clearances are not within the scope of Laws 2021, Chapter 351. An encroachment permittee is responsible for all environmental clearances. On Department-owned broadband projects, ADOT is responsible for all environmental clearances which cover any provider who decides to lease a portion of the conduit.	N/A
General	Does the proposed January 1, 2023, effective start date mean the Department will not approve permits on controlled-access rights-of-way (R/W) until the effective date?	Yes. Permits for controlled-access are considered as a special case in accordance with the ADOT Utility and Railroad Accommodation Guidelines. However, the intent of the broadband legislation is to give special consideration to these types of permits in order to promote middle-mile builds.	R17-3-602

Category	Question	Response	Section
General	Can providers connect to the Department-owned broadband projects?	Yes, micro-ducts and/or individual fibers will be leased along those routes. Lateral connections can intercept the conduit, preferably at interchanges with existing pull boxes (3 pull boxes are being installed at each location to support providers), in accordance with the ADOT encroachment permit process.	R17-3-603
In-Kind Trading	R17-3-602(C)(6)(c)(iii) mentions in-kind trades can not be used by the Department to compete with the provider. Can this be waived by the provider (non-compete clause)?	Yes. As agreed upon by the Department and the provider:	R17-3-602
In-Kind Trading	When a provider conducts an in-kind trade with ADOT, who is responsible for maintenance and repair of the in-kind facility (e.g., conduit, fiber, etc)?	Unless otherwise agreed to, the owner of the facility is responsible for maintenance (i.e, a single maintenance entity vs numerous maintenance entities) however, the associated in-kind costs will be agreed up in the Telecommunications Use and Occupancy Agreement. One option is ADOT can share in the maintenance costs, another option would be to include this function as part of the in-kind trading by establishing a valuation for maintenance activities.	R17-3-602
In-Kind Trading	If a provider supplies ADOT with telecommunication facilities as an in-kind trade, are separate conduits and pull boxes needed?	The Department prefers to have its own conduit and access point for physical and cyber security purposes. However, if this is not feasible due to constructability reasons, the Department is open to other options as agreed upon by the Department and the provider:	R17-3-602

Category	Question	Response	Section
In-Kind Trading	How will the valuation of in-kind trading facilities be determined?	The Department and provider will agree upon a valuation based upon fair market value of the facilities. For example, conduit in an area with challenging constructability such as a rocky area or significant directional boring would be valued higher than conduit that was easily plowed.	R17-3-602
Lease Agreement	Will each new installation require a Telecommunications Use and Occupancy Agreement, or will the Department use a Master Lease Agreement approach with subsequent addendums for additional new installations?	Once a OMC (Operate-Maintain-Commercialize) vendor is procured, agreement details will be finalized. Master License Agreement (MLA) is the preferred method at this time.	R17-3-602
Misc	Can ADOT make priority routes "utility corridors" and clear them for environmental and permits.	This is outside the scope and authority of Laws 2021, Chapter 351.	N/A
Private Landowners Rights-of-Way (R/W)	What is being done to reduce barriers for the challenges associated with obtaining permission from underlying landowners that are within ADOT rights-of-way (R/W)?	For federal, state, local municipalities, and tribal authorities, the encroachment permit process remains the same---permission from these underlying land owner must be obtained by the provider. For private landowners, the intention of the rules is to alleviate the requirement to obtain permission, for those builds within ADOT rights-of-way.	ARS 28-7382
Private Landowners Rights-of-Way (R/W)	What is the risk of potential claims or litigation associated with private landowner easements?	Laws 2021, Chapter 351 (A.R.S. § 28-7382), provides a process for private landowners to submit claims for "just compensation" for use of the land within ADOT rights-of-way.	ARS 28-7382

Category	Question	Response	Section
Private Landowners Rights-of-Way (R/W)	For the parcel and contact information for private landowners, will the Department provide this information to the provider for non Department-owned builds?	No, it will be the responsibility of the provider to obtain this information and comply with the notification process. More information, including a instructions and a template letter, will be included in the encroachment permit process once the rules are in effect. The Department is responsible for identifying and notifying private landowners for Department-owned projects.	ARS 28-7382
Relocation	Who is responsible for relocation expenses for provider-owned telecommunication facilities when the Department utilizes a portion via an in-kind trade?	The owner of the facility, which is the provider, is responsible for relocation costs. On Department-owned conduit segments (e.g., I-17 & I-19), the Department is the owner of the facility and therefore responsible for relocation costs.	R17-3-603
Relocation	For relocations, is abandonment an option?	Relocation is a case-by-case basis. In some instances, abandonment may not require removal. In other cases, removal is required to eliminate a utility conflict with an ADOT construction project.	R17-3-603
Relocation	Is the ADOT State Transportation Improvement Plan (STIP), also known as the Five-Year Construction Program, being considered for the Department-owned broadband projects such as I-17 and I-19 to prevent future relocations?	Yes, however, some relocations are unpreventable and in the event of a relocation of Department-owned conduit, the Department is responsible for associated expenses.	R17-3-603

Category	Question	Response	Section
Relocation	Are any of the current Department-owned broadband projects causing relocations of existing provider facilities?	No, we are not aware of any telecommunication relocations due to the I-17 or I-19 Department-owned broadband projects. These projects are separate from other current ADOT construction projects (e.g., the I-17 Flex Lane / Widening project).	R17-3-603
Rights-of-Way Occupancy Rates	Why is land owned by another entity such as BLM, USFS, or ASLD being used in the R/W Compensation Calculation?	Although Arizona has a variety of underlying landowners along ADOT Rights-of-Way, the Department has added value by providing a cleaned, conditioned and maintained pathway along the highway (in between R/W fences) that allows safe and easy access to telecommunications facilities.	R17-3-602
Rights-of-Way Occupancy Rates	What states or cities were researched for developing the right-of-way occupancy rates?	The Department reviewed state programs (e.g., Utah, Tennessee, Iowa, and others) and local municipalities (e.g., Chandler, Mesa, Scottsdale, and others) within Arizona to determine the right-of-way occupancy rates.	R17-3-602
Rights-of-Way Occupancy Rates	Was fair market value (FMV) considered for the right-of-way occupancy rates?	Yes, to the extent FMV is used by some states; however, the variance in values can be quite significant and unpredictable. Maintaining a FMV appraisal approach is also challenging to maintain with the need for reappraisals every few years. A recent FMV appraisal example is I-40 from CA to NM (~360 miles). The appraisal was conducted in 2020 and the average annual market rent was determined to be ~\$1.95/ft. In comparison, UT DOT has 9 established zones and the FMV ranges from \$0.006/ft per year to \$15.90/ft per year which is an average of \$4.66/ft per year.	R17-3-602

Category	Question	Response	Section
Rights-of-Way Occupancy Rates	Which method was used for determining compensation rates---fair market value appraisals, cost-based, zone/tier system, or other?	Laws 2021, Chapter 351, does not stipulate an approach or method such as cost-based, fair market value, tier or zone based approach or any other specific approach. A holistic approach was taken; methods used by other states and cities within Arizona were considered along with the current rates being charged. A hybrid, three (3) zone approach based on Interstates, Controlled-Access (non-Interstates), and all other highways was selected due to its simplicity and predictability.	R17-3-602
Rights-of-Way Occupancy Rates	How were the compensation rates established?	Primarily based on research from other State Departments of Transportation and Cities/Towns in AZ, as well as a sample fair market value appraisal conducted in AZ. For example, UT DOT charges between \$0.006/ft to \$15.90/ft, TN DOT charges between \$0.17/ft and \$0.50/ft, and IA DOT charges \$2.27/ft. Cities and Towns in AZ can charge up to \$2.32/ft. Most of these entities charge a % annual rate increase that is equivalent to the CPI (Consumer Price Index) or 3% or higher. A 2% annual rate increase was selected intentionally to be lower than the aforementioned rates as well as offer predictability and simplicity in calculations.	R17-3-602

Category	Question	Response	Section
Rights-of-Way Occupancy Rates	Why is there is a option to pay annually (year-by-year) instead of just a 30-year term option?	To allow maximum flexibility and options for providers.	R17-3-602
Rights-of-Way Occupancy Rates	What will the R/W Occupancy Rates be utilized for?	Pursuant to A.R.S. § 28-7387, the funds will be used for the maintenance, operations and expansion of department-owned telecommunications facilities. The funds will also be used for payment of compensation pursuant to A.R.S. § 28-7382 (just compensation for private landowner easements).	R17-3-602
Rights-of-Way Occupancy Rates	How is the Discount Rate applied in the R/W Occupancy Rate calculation?	Utilizing the net present value (NPV) calculation, a dollar today is worth more than a dollar tomorrow (i.e., assuming you make interest on the dollar today). To incentivize 20-year and 30-year term options, a 10% discount rate is applied using the NPV formula. For example, the compensation for 10 miles of Interstate would equal ~\$1.5m if a provider paid year-by-year for 30-years. With a 30-year agreement and the discount rate formula applied, the compensation (in a lump-sum payment at the beginning of the 30-year term) would equal ~\$500k (which can be compensated via monetary, in-kind trading or combination of both) which would effectively be ~\$0.31/ft per year).	R17-3-602