

AN ARIZONA LEGISLATIVE BILL
(Digital Arizona Highways)
REV. 12b

To amend Chapter 20 of title 28, Arizona Revised Statutes, to authorize the Director of the Arizona Department of Transportation to install broadband conduit as part of certain rural highway construction projects, and for other purposes if funding is received by the department to cover the cost.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Digital Arizona Highways Act of 2012."

Sec. 2 Chapter 20 of title 28, Arizona Revised Statutes, is amended by adding the following:

Sec. 28-xxxx. Broadband conduit installation; rural highway construction projects

A. The Director may obtain information-transportation right of way as defined in Section 28-7092 and install broadband conduit in accordance with this section as part of any covered rural highway construction project if funding is received by the department to cover the cost. The Director may ensure with respect to a covered highway construction project that--

1. an appropriate number of broadband conduits each with an appropriate number of preinstalled innerducts and microducts, as determined by the Director, are installed along the highway to accommodate multiple broadband providers, with consideration given to the availability of existing conduits and future needs;
2. the size of each conduit is consistent with industry best practices and is sufficient to accommodate potential demand, as determined by the Director;
3. hand holes and manholes for fiber access and pulling cable for each conduit are placed at intervals consistent with industry best practices, as determined by the Director; and
4. each project allocates sufficient off-highway space for vaults and re-generation enclosures.

B. The Director may establish standards to carry out the purposes of this section that consider population density in the area of a covered rural highway construction project, the type of highway involved in the project, and existing broadband access in the area of the project.

C. The Director may ensure that each broadband conduit and/or innerduct/microduct installed pursuant to this section is capable of supporting fiber optic cable placement techniques consistent with industry best practices, as determined by the Director.

D. The Arizona department of administration is authorized to ensure that any Qualified Requesting Broadband Provider has access to broadband conduit installed pursuant to this section, which is not reserved for use by Arizona department of transportation, on a competitively neutral and nondiscriminatory

basis for a charge not to exceed its Cost-Based Rate. The Provider may lease at the conduit, innerduct, or microduct levels, for at least one lease-term and at a Cost-Based Rate determined by the Arizona department of administration. Such Provider access shall be for sole use of at least one microduct within the conduit for the at least one lease-term. Such access shall include provider-separated securable ingress and egress means.

E. In carrying out this section, the Director shall coordinate with other State entities charged with responsibility for broadband infrastructure or policy as the Director determines appropriate, including making determinations with respect to potential demand under subsection A, paragraph 2 of this section and coordinating with existing providers in the markets where conduit will be placed to determine actual need and demand and to work to minimize provider operational and cost impacts with the relocation of placed and utilized conduit.

F. For the purposes of this section:

(1) 'broadband service' 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. Broadband service 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.

(2) 'broadband conduit' means a conduit for fiber optic cables that support broadband or, where appropriate, wireless facilities for broadband service.

(3) 'covered highway construction project' means a project to construct a new rural highway or to construct/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 funds. Also, covered highway construction project includes broadband conduit projects initiated separately from other highway construction, wherein such projects connect a discontinuous segment of broadband conduit to another segment of broadband conduit or as a last resort to facilitate connecting to Internet peering points or exchange points after provider has determined no existing providers can provide necessary conduit.

(4) 'Cost-Based Rate' means a lease rate that is only comprised of direct and associated indirect costs of obtaining and maintaining the associated right of way, broadband conduit, and innerduct/microduct.

(5) 'Qualified Requesting Broadband Provider' means any entity that provides for sale or resale of wholesale or retail broadband services in the State of Arizona and is recognized as an Eligible Telecommunications Carrier, as a qualified broadband provider by the Arizona Corporation Commission, or meets Federal Communications Commission and industry carrier class service guidelines.

(6) 'right of way' includes both an easement or a fee interest.

(7) 'rural highways' means that portion of any highway in Arizona that is 1) outside the municipal boundary of any Arizona city having a population of 10,000 or more persons, or 2) outside federal metropolitan and micropolitan statistical areas.

G. The Director may determine that conduit can also be installed without regard to the timing of a related existing construction project, but based on a particular

need for broadband infrastructure because of a broadband deficit situation, or an overriding security or redundancy need.

[Related Definitional Changes in Title 28—changes are underlined.]

28-7092. Land acquisition; transportation purposes

A. In the name of this state, the director may acquire, either in fee or a lesser estate or interest, real property that the director considers necessary for transportation purposes by purchase, donation, dedication, exchange, condemnation or other lawful means with monies from the state highway fund or any other monies appropriated to the department.

B. Property acquired for transportation purposes includes land or any interest in the land necessary for:

1. Rights-of-way, campsites, roadside rest areas, water or material needed in the construction, improvement or maintenance of state highways, airports, runways, taxiways or other property under the jurisdiction, possession or control of the department.
2. Spoil banks, rock quarries, gravel pits, sand or earth borrow pits.
3. Rights-of-way to the place where material required in the construction, improvement or maintenance of state highways, airports, runways or taxiways may be located.
4. Offices, shops, maintenance camps, storage yards, inspection or weighing stations or radio transmitter or repeater stations.
5. Rights-of-way for access to any location prescribed in this subsection.
6. Relocation of existing utility or irrigation facilities and rights-of-way that are required to be relocated to facilitate a transportation purpose.
7. Legal access to property acquired by the director through adjacent property.
8. Environmental mitigation or banking credits, if necessary to satisfy the requirements of federal or state environmental laws or regulations or requirements to obtain a permit, grant or right to use property from a federal or state agency. For the purposes of this paragraph:
 - (a) "Banking credits" means payment in lieu of costs of acquisition, preservation or maintenance of habitat or other environmentally protected locations.
 - (b) "Environmental mitigation" means replacement of habitat or other environmentally protected locations that are taken for or affected by a transportation facility.

9. Transportation of Information.

C. If part of a parcel of land is to be taken for transportation purposes and the remainder is to be left in such shape or condition as to be of little value to its owner or to give rise to claims or litigation concerning severance or other damage, the director may acquire the whole parcel by any means provided in subsection A, and the remainder may be sold, exchanged for other property needed for transportation purposes or used for rights-of-way for relocated utility or irrigation facilities.

28-7701. Definitions

In this chapter, unless the context otherwise requires:

1. "**Concession**" means any lease, ground lease, franchise, easement, permit or other binding agreement transferring rights for the use or control, in whole or in part, of an eligible facility by the department or other unit of government to a private partner in accordance with this chapter.
2. "**Eligible facility**" means any facility, whether real or personal property, developed or operated after September 30, 2009 in accordance with this chapter, including any existing, enhanced, upgraded or new facility that is any of the following:
 - (a) Used or useful for the safe transport of people, information, or goods via one or more modes of transport, whether involving highways, bridges, tunnels, conduit, railways, monorails, transit, bus systems, guided rapid transit, fixed guideways, ferries, boats, vessels, airports, intermodal or multimodal systems or any other mode of transport.
 - (b) Used by or useful to the department, including vehicle registration and driver licensing facilities, operating systems and information systems.
 - (c) Related or ancillary to, or used or useful to provide, operate, maintain or generate revenue for, a facility under subdivision (a) or (b), including administrative buildings and other buildings, structures, parking, rest areas, maintenance yards, rail yards, ports of entry or storage facilities, vehicles, rolling stock, energy systems or other related equipment, items or property.
3. "**Private partner**" means a person, entity or organization that is not the federal government, this state, a political subdivision of this state or a unit of government.
4. "**Unit of government**" means any agency, office or department of this state, city, county, district, commission, authority, entity, port or other public corporation organized and existing under statutory law or under a voter approved charter or initiative, and any intergovernmental entity.