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LEGISLATURE OF THE STATE OF IDAHO  
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1 AN ACT  
2 RELATING TO THE IDAHO BROADBAND DIG ONCE AND RIGHT-OF-WAY ACT; AMENDING  
3 SECTION 40-516, IDAHO CODE, TO PROVIDE FOR LOCAL CONTROL OF CERTAIN  
4 INFRASTRUCTURE; AMENDING SECTION 40-517, IDAHO CODE, TO DEFINE A TERM  
5 AND TO REVISE DEFINITIONS; AMENDING SECTION 40-518, IDAHO CODE, TO  
6 PROVIDE FOR A CERTAIN BONDING REQUIREMENT AND LOCAL CONTROL; REPEALING  
7 SECTION 40-519, IDAHO CODE, RELATING TO A BROADBAND PROVIDER AND FAIR  
8 MARKET VALUE; AMENDING SECTION 40-520, IDAHO CODE, TO SPECIFY CERTAIN  
9 REQUIREMENTS REGARDING BROADBAND INFRASTRUCTURE; AMENDING CHAPTER 5,  
10 TITLE 40, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 40-521, IDAHO  
11 CODE, TO PROVIDE FOR CERTIFICATION OF RADIO FREQUENCY EMISSIONS; AMEND-  
12 ING CHAPTER 5, TITLE 40, IDAHO CODE, BY THE ADDITION OF A NEW SECTION  
13 40-522, IDAHO CODE, TO PROVIDE FOR AGREEMENTS BETWEEN PROVIDERS AND THE  
14 DEPARTMENT; AMENDING CHAPTER 5, TITLE 40, IDAHO CODE, BY THE ADDITION  
15 OF A NEW SECTION 40-523, IDAHO CODE, TO PROVIDE A BOND REQUIREMENT; AND  
16 DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

17 Be It Enacted by the Legislature of the State of Idaho:

18 SECTION 1. That Section 40-516, Idaho Code, be, and the same is hereby  
19 amended to read as follows:

20 40-516. LEGISLATIVE INTENT: DIG ONCE POLICY. (1) It is the intent of  
21 the legislature to recognize that the citizens of the state live and work in  
22 a data-driven society and that the connectivity in Idaho's urban and rural  
23 areas are key for a thriving Idaho economy. Broadband is a vital component in  
24 accomplishing connectivity throughout Idaho.

25 (2) The legislature recognizes and hereby declares that broadband ser-  
26 vice throughout the entire state is in the overall public interest for the  
27 state of Idaho in furtherance of the social and economic development of the  
28 state, and the use of highway rights-of-way to support broadband infrastruc-  
29 ture and a "Dig Once Policy" furthers the overall public interest.

30 (3) It is the intent of the legislature that the Idaho transportation  
31 department develop rules, standards, and policies consistent with the "Dig  
32 Once Policy" to facilitate the expansion of broadband with the cost-effi-  
33 cient, orderly, and coordinated installation of broadband infrastructure  
34 on highway rights-of-way and during roadway construction, while maintaining  
35 local control of such infrastructure.

36 SECTION 2. That Section 40-517, Idaho Code, be, and the same is hereby  
37 amended to read as follows:

38 40-517. DEFINITIONS. As used in sections 40-515 through ~~40-520~~  
39 ~~40-523~~, Idaho Code:

1 (1) "Broadband" means wide bandwidth communication transmissions al-  
2 lowing high speed internet access with an ability to simultaneously trans-  
3 port multiple signals and traffic types at a minimum transmission speed of  
4 one hundred (100) megabits per second for downloads and twenty (20) megabits  
5 per second for uploads.

6 (2) "Broadband infrastructure" means networks of deployed telecommu-  
7 nications equipment, conduit, and technologies necessary to provide broad-  
8 band and other advanced telecommunications services to wholesalers or end  
9 users, including but not limited to private homes, businesses, commercial  
10 establishments, schools, or public institutions.

11 (3) "Broadband provider" means any entity that:

12 (a) Provides broadband services, including but not limited to a  
13 telecommunications provider, cable service provider, broadband  
14 provider, cellular provider, political subdivision that provides  
15 broadband services, electric cooperative that provides broadband  
16 services, electric utility that provides broadband services, state  
17 government entity that provides broadband services, tribal government  
18 that provides broadband services, or internet service provider; or

19 (b) Builds broadband infrastructure, including but not limited to a  
20 port, nonprofit organization, or private-public partnership estab-  
21 lished for the purpose of expanding broadband in the state.

22 (4) "Department" means the Idaho transportation department.

23 (5) "Dig Once Policy" means a policy or practice that minimizes the  
24 number and scale of excavations or construction and costs when installing  
25 broadband infrastructure in highway rights-of-way.

26 (6) "Highway" means a road that is part of the state highway system as  
27 defined in section 40-120, Idaho Code.

28 (7) "Local authority" means a city or county of this state.

29 ~~+7)~~ (8) "Longitudinal access" means access to or use of any part of a  
30 right-of-way of a highway that extends generally parallel to the right-of-  
31 way for a total of ~~one hundred (100)~~ fifty (50) or more linear feet or the max-  
32 imum distance allowed by local ordinance.

33 SECTION 3. That Section 40-518, Idaho Code, be, and the same is hereby  
34 amended to read as follows:

35 40-518. DIG ONCE POLICY NOTIFICATION AND PROJECT IDENTIFICATION. (1)  
36 The department shall develop on a competitively neutral basis a registry  
37 of broadband providers interested in installing broadband infrastructure  
38 along a highway. The department shall update the registry no less than once  
39 per year.

40 (2) The department shall identify potential projects managed by the de-  
41 partment, either self-performed by the department or performed under con-  
42 tract, on highways under the department's jurisdiction for which notice un-  
43 der subsection (3) of this section is required. Potential projects eligible  
44 for identification shall include projects that involve the construction of  
45 underground infrastructure, road construction, or other work that will re-  
46 sult in longitudinal access that could reasonably include, or prepare for,  
47 the installation of broadband infrastructure consistent with the "Dig Once  
48 Policy."

1 (3) For each project identified under subsection (2) of this section,  
2 the department shall timely notify the broadband providers on the registry  
3 established under subsection (1) of this section:

4 (a) That the project has been identified as suitable for coordination  
5 with broadband providers;

6 (b) Of the broadband provider's opportunity to coordinate with the de-  
7 partment to accommodate the installation of broadband infrastructure;  
8 and

9 (c) Of the process for submitting a statement of interest to coordinate  
10 with the department on the project.

11 (4) The department shall provide each broadband provider that receives  
12 a notice under subsection (3) of this section no less than thirty (30) days  
13 from the date the notice is issued to submit to the department a statement of  
14 interest to coordinate with the department.

15 (5) For each project for which the department provides notice under  
16 this section, the department shall engage with each broadband provider that  
17 submits a statement of interest to determine whether accommodation of in-  
18 stallation of broadband infrastructure is appropriate.

19 (6) The department shall make the final determination of the suitabil-  
20 ity of a project to include installation of broadband infrastructure and  
21 may prescribe any conditions, requirements, restrictions, or other provi-  
22 sions in furtherance of the "Dig Once Policy." Conditions, requirements,  
23 restrictions, or provisions prescribed pursuant to this subsection ~~may~~  
24 shall include but need not be limited to liability provisions including a ten  
25 million dollar (\$10,000,000) aggregate and one million dollar (\$1,000,000)  
26 per occurrence liability bond with no exclusions for health effects, re-  
27 quirements related to the financial responsibilities for future relocation  
28 of broadband infrastructure if relocation is necessary, and indemnification  
29 provisions, requirements for periodic testing of emissions levels to verify  
30 compliance with federal communications commission requirements, compliance  
31 with the federal Americans with disabilities act (ADA), 42 U.S.C. 12101 et  
32 seq., including a requirement to report ADA complaints to the department and  
33 local authorities, compliance with the national environmental policy act  
34 (NEPA), and compliance with any and all applicable state and federal laws and  
35 regulations. The department may deny the installation of broadband infra-  
36 structure if the installation hinders or obstructs highway construction,  
37 maintenance, or operational safety, is contrary to statute, ~~or~~ rule, local  
38 ordinance, or unduly delays or interferes with construction, maintenance,  
39 joint trenching projects, or the repair or construction of water, wastewa-  
40 ter, electrical, or gas line facilities.

41 (7) The department shall preserve local zoning control over the rights  
42 of way that pass through urban areas.

43 ~~(7)~~ (8) The department may install conduit for its own use where appro-  
44 priate or in support of expanding broadband infrastructure in the state of  
45 Idaho.

46 ~~(8)~~ (9) The department shall promulgate rules for carrying out the pro-  
47 visions of this section that are nondiscriminatory, neutral, fair, and ob-  
48 jective and that promote competition among broadband providers. Rules shall  
49 include, at a minimum:

- 1 (a) Procedures consistent with the "Dig Once Policy" for processing and
- 2 reviewing statements of interest received from a broadband provider by
- 3 the department. Consistent with the "Dig Once Policy," the department
- 4 shall issue rules that will restrict speculative practices that may un-
- 5 duly impact and congest the department's rights-of-way;
- 6 (b) A broadband provider shall be charged for the actual cost in-
- 7 curred by the department as a result of the installation of a broadband
- 8 provider's broadband infrastructure. If there is more than one (1)
- 9 broadband provider installing broadband infrastructure, then each
- 10 broadband provider shall share equally in the common charges of the in-
- 11 stallation of broadband infrastructure, including but not limited to
- 12 trenching, boring, traffic controls, and make-ready costs;
- 13 (c) Criteria for identifying projects that would be suitable for the
- 14 placement of broadband infrastructure;
- 15 (d) Criteria for the installation of the department's own conduit.
- 16 Rules may allow use of such conduit by broadband providers;
- 17 (e) Procedures and forms for permitting processes; and
- 18 (f) A contested case administrative appeals process, pursuant to the
- 19 Idaho administrative procedure act, chapter 52, title 67, Idaho Code.
- 20 ~~(9)~~ (10) The department may not grant any longitudinal access under this
- 21 section that results in a significant compromise of the safe, efficient, and
- 22 convenient use of a highway for the traveling public or that violates a local
- 23 ordinance.
- 24 (11) The department will encourage use of wired systems because they
- 25 provide faster, more efficient internet service, have a longer life by as
- 26 much as ten (10) times, are more cost effective, require less power, and are
- 27 safer for humans and the environment.

28 SECTION 4. That Section 40-519, Idaho Code, be, and the same is hereby  
29 repealed.

30 SECTION 5. That Section 40-520, Idaho Code, be, and the same is hereby  
31 amended to read as follows:

32 40-520. RIGHTS-OF-WAY FOR BROADBAND. (1) ~~Except as provided in sub-~~  
33 ~~section (5) of this section, t~~The department shall allow a broadband  
34 provider longitudinal use and access to the rights-of-way of a highway for  
35 the installation, operation, and maintenance of broadband infrastructure  
36 only pursuant to subsections (5) and (7) of this section.

37 (2) The department shall enter into a license agreement with a broad-  
38 band provider and issue a permit before granting it any longitudinal access  
39 under this section. Except as specifically provided by the agreement, a  
40 property interest in a right-of-way may not be granted under the provisions  
41 of this section. An agreement entered into by the department under this  
42 section:

- 43 (a) Shall include terms and conditions that are nondiscriminatory and
- 44 are consistent with the public policy promoting the expansion of broad-
- 45 band infrastructure in Idaho, such as liability provisions, require-
- 46 ments related to the financial responsibilities for future relocation

- 1 of underground broadband infrastructure if relocation is necessary,  
2 and indemnification provisions;
- 3 (b) Shall specify maintenance responsibilities for broadband infra-  
4 structure being placed;
- 5 (c) May require that the department be allowed to utilize the broadband  
6 infrastructure only for public safety warnings, road condition notifi-  
7 cations, and amber alerts to motorists on highways;
- 8 (d) May require that the broadband provider install conduit for  
9 nonexclusive use, in which the cost of the project shall be shared pro-  
10 portionally. Alternatively, if the department requires the broadband  
11 provider to install only one (1) conduit of equal or smaller size of the  
12 conduit being installed exclusively for internal department purposes,  
13 then the department shall be responsible only for the costs of the addi-  
14 tional materials and labor for the installation of its own conduit. The  
15 department must keep all documents and records regarding the internal  
16 use of the conduit and make public such documents if requested. The  
17 department may not allow the use of its internal conduit to any other  
18 entity. If the department allows the use of internal conduit to another  
19 entity, then the department shall reimburse the broadband provider for  
20 half of the project costs;
- 21 (e) Shall specify that the broadband provider shall own ~~its~~ any broad-  
22 band infrastructure purchased at market value with its own funds, but  
23 shall not own any broadband infrastructure purchased with public funds;  
24 and
- 25 (f) Shall specify that the use of the rights-of-way shall be nonexclu-  
26 sive-;
- 27 (g) Shall guarantee the rights of entities that have existing interests  
28 in the rights-of-way;
- 29 (h) Shall enable local public private partnerships to develop and own  
30 infrastructure in the right-of-way at no cost; and
- 31 (i) Shall recommend that local authorities own the broadband infra-  
32 structure if feasible.
- 33 (3) A broadband provider shall be responsible for the costs of in-  
34 stallings its own broadband infrastructure on the department's right-of-way.  
35 If there is more than one (1) broadband provider installing broadband infra-  
36 structure at the same project, then the broadband provider is responsible  
37 for its pro rata share of the cost.
- 38 (4) The department shall require the same fees from a broadband  
39 provider under this section for longitudinal access to the right-of-way as  
40 a public utility defined under section 61-129, Idaho Code. However, fees  
41 charged to a cable provider shall be in accordance with applicable federal  
42 law.
- 43 (5) The department may not grant any longitudinal access under this  
44 section that results in a significant compromise of the safe, efficient,  
45 and convenient use of a highway for the traveling public, or that violates a  
46 local ordinance.
- 47 (6) The department may install conduit for its own use where appro-  
48 priate or in support of expanding broadband infrastructure in the state of  
49 Idaho.
- 50 (7) The department shall promulgate rules:

- 1 (a) Governing the installation, operation, and maintenance of broad-
- 2 band infrastructure granted longitudinal access pursuant to this
- 3 section, with conditions for initial certification of compliance with
- 4 applicable radiofrequency radiation limits and random radiofrequency
- 5 testing, including limits on power output and periodic testing thereof;
- 6 (b) Specifying the procedures for establishing an agreement for longi-
- 7 tudinal access for a broadband provider;
- 8 (c) Specifying criteria for the installation of the department's own
- 9 conduit and use of such conduit by broadband providers consistent with
- 10 this section; and
- 11 (d) Providing for the relocation or removal of broadband infrastruc-
- 12 ture for needed changes to a highway on the interstate system.
- 13 (8) Nothing in section 40-515, Idaho Code, through this section is in-
- 14 tended to preempt, diminish, or otherwise limit the authority of the depart-
- 15 ment over public rights-of-way.

16 SECTION 6. That Chapter 5, Title 40, Idaho Code, be, and the same is  
17 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
18 ignated as Section 40-521, Idaho Code, and to read as follows:

19 40-521. CERTIFICATION OF RADIO FREQUENCY EMISSIONS. (1) Within  
20 forty-five (45) days of initial operation or a substantial modification  
21 of a personal wireless service facility, the owner and/or operator of each  
22 telecommunications antenna shall submit to the appropriate administrator of  
23 the department as well as the planning administrator of the local authority  
24 in which the facility is located a written certification by a licensed pro-  
25 fessional engineer, sworn to under penalty of perjury, that the facility's  
26 radio frequency emissions comply with the limits codified within 47 CFR  
27 1.1310(e)(1).

28 (2) The engineer shall measure the emissions of the approved facility,  
29 including the cumulative impact from other nearby facilities, and determine  
30 if such emissions are within the limits described in subsection (1) of this  
31 section. A report of these measurements and the engineer's findings with re-  
32 spect to compliance with the FCC's maximum permissible exposure limits shall  
33 be submitted to the local authority's planning administrator.

34 (3) If the report shows that the facility does not comply with applica-  
35 ble limits, then the owner and/or operator shall cease operation of the fa-  
36 cility until the facility is brought into compliance with such limits. Proof  
37 of compliance shall be a certification provided by the engineer who prepared  
38 the original report.

39 (4) The state of Idaho and the local authority where the facility is lo-  
40 cated may require, at the applicant's expense, independent verification of  
41 the results of the analysis.

42 (5) At the operator's expense, the state of Idaho and the local author-  
43 ity where the facility is located may retain an engineer to conduct random  
44 unannounced radiofrequency radiation testing of such facilities to ensure  
45 the facility's compliance with the limits established in subsection (1) of  
46 this section.

47 (6) The state of Idaho and the local authority where the facility is lo-  
48 cated may cause such random testing to be conducted as often as the they deem

1 appropriate. However, they may not require the owner and/or operator to pay  
2 for more than one test per facility per calendar year unless such testing re-  
3 veals that one or more of the owner and/or operators facilities are exceed-  
4 ing the limits set forth in subsection (1) of this section, in which case the  
5 state of Idaho and the local authority where the facility is located shall be  
6 permitted to demand that the facility be brought into compliance with such  
7 limits, and to conduct additional tests to determine if, and when, the owner  
8 and/or operator thereafter brings the respective facility and/or facilities  
9 into compliance.

10 (7) If the state of Idaho or the local authority where the facility is  
11 located shall at any time find that there is good cause to believe that a  
12 personal wireless service facility and/or one or more of its antennas are  
13 emitting radiofrequency radiation at levels in excess of the legal limits  
14 set forth in subsection (1) of this section, then the owner and/or opera-  
15 tor of such facility shall be required to show cause why any and all permits  
16 and/or approvals for such facility and/or facilities should not be revoked  
17 pursuant to a local authority hearing process or the department's adminis-  
18 trative hearing process pursuant to the administrative procedure act.

19 (8) A local authority shall have the power to impose a fine of not less  
20 than \$1,000, nor more than \$5,000 for a violation of this section. In the  
21 case of a second offense within less than five (5) years, a local author-  
22 ity shall be authorized to impose a minimum fine of five thousand dollars  
23 (\$5,000) but not more than twenty five thousand dollars (\$25,000). In the  
24 event that an owner or operator of one (1) or more personal wireless facili-  
25 ties is found to violate this section three (3) or more times within any five  
26 (5) year period, then, in addition to revoking any applicable approvals, a  
27 local authority shall have the power to render a determination within which  
28 it shall deem the owner/operator prohibited from filing any applications for  
29 any new wireless personal services facilities within its jurisdiction for a  
30 period of five (5) years.

31 SECTION 7. That Chapter 5, Title 40, Idaho Code, be, and the same is  
32 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
33 ignated as Section 40-522, Idaho Code, and to read as follows:

34 40-522. AGREEMENTS BETWEEN PROVIDERS AND THE DEPARTMENT. (1) Except  
35 as provided in section 40-520(5), Idaho Code, the department may allow a  
36 provider longitudinal access to the right-of-way of a highway for the in-  
37 stallation, operation and maintenance of a telecommunication facility.

38 (2) The department shall enter into an agreement with a provider and is-  
39 sue a permit before granting the provider any longitudinal access under this  
40 section or pursuant to the provisions of section 40-520, Idaho Code.

41 (3) Except as specifically provided by an agreement, a property inter-  
42 est in a right-of-way may not be granted pursuant to this section or the pro-  
43 visions of section 40-520, Idaho Code.

44 (4) An agreement entered into by the department under this section  
45 shall:

46 (a) Specify the terms and conditions for renegotiating the agreement.

47 (b) Specify maintenance responsibilities for each telecommunication  
48 facility.

- 1 (c) Be nonexclusive.
- 2 (d) Be limited to a maximum term of thirty (30) years.
- 3 (5) The director shall adopt rules that:
- 4 (a) Govern the installation, operation, and maintenance of a telecom-
- 5 munication facility granted longitudinal access under this section or
- 6 the provisions of section 40-520, Idaho Code;
- 7 (b) Specify the procedures for establishing an agreement for longitu-
- 8 dinal access for a provider; and
- 9 (c) Provide for the relocation or removal of a telecommunication facil-
- 10 ity for any of the following:
- 11 (i) Needed changes to a highway.
- 12 (ii) Expiration of an agreement.
- 13 (iii) Breach of an agreement.
- 14 (iv) Specifying criteria for the installation of the department's
- 15 own conduit and use of such conduit by broadband providers consis-
- 16 tent with this section; and
- 17 (v) Providing for the relocation or removal of broadband infra-
- 18 structure by broadband providers for needed changes to a highway
- 19 on the interstate system, and removal of unused facilities in-
- 20 cluding but not limited to posting a bond to guarantee financing
- 21 the removal of unused or obsolete facilities including all equip-
- 22 ment that comprises any portion or part of the facility, compound
- 23 and/or complex, as well as any accessory facility or structure,
- 24 and including the cost of full restoration and reclamation of the
- 25 site, to the extent practicable, to its condition before devel-
- 26 opment in accord with the decommissioning and reclamation plan
- 27 required herein.

28 SECTION 8. That Chapter 5, Title 40, Idaho Code, be, and the same is  
29 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
30 ignated as Section 40-523, Idaho Code, and to read as follows:

31 40-523. BOND REQUIREMENT. (1) Upon receiving a permit or approval from  
32 a local authority and prior to the commencement of installation and/or con-  
33 struction of such facility or any part thereof, the applicant shall file with  
34 the state of Idaho and the applicable local authority jointly a bond for a  
35 length of no less than three years in an amount equal to or exceeding the es-  
36 timate of the cost of removal of the facility and all associated structures,  
37 fencing, power supply, and other appurtenances connected with the facility.  
38 Such bond must be provided within thirty (30) days of the approval date and  
39 before any installation or construction begins.

40 (2) Replacement bonds must be provided ninety (90) days prior to the ex-  
41 piration of any previous bond.

42 (3) At any time if the state of Idaho or a local authority has good cause  
43 to question the sufficiency of the bond at the end of any three-year period,  
44 the owner and/or operator of the facility, upon request by the state of Idaho  
45 or the local authority, shall provide an updated estimate and bond in the ap-  
46 propriate amount.



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1           (4) Failure to keep the bonds in effect is cause for removal of the fa-  
2           cility at the owner's expense. A separate bond will be required for each fa-  
3           cility, regardless of the number of owners or the location.

4           SECTION 9. An emergency existing therefor, which emergency is hereby  
5           declared to exist, this act shall be in full force and effect on and after  
6           July 1, 2023.