

IN THE SENATE

SENATE BILL NO. 1318

BY TRANSPORTATION COMMITTEE

AN ACT

1 RELATING TO THE IDAHO BROADBAND DIG ONCE AND RIGHT-OF-WAY ACT; AMENDING
2 SECTION 40-516, IDAHO CODE, TO REVISE PROVISIONS REGARDING LEGISLATIVE
3 INTENT; AMENDING SECTION 40-517, IDAHO CODE, TO DEFINE TERMS AND TO
4 REVISE DEFINITIONS; AMENDING SECTION 40-518, IDAHO CODE, TO REVISE PRO-
5 VISIONS REGARDING DIG ONCE PROJECTS; REPEALING SECTION 40-519, IDAHO
6 CODE, RELATING TO A BROADBAND PROVIDER AND FAIR MARKET VALUE; AMENDING
7 SECTION 40-520, IDAHO CODE, TO REVISE PROVISIONS REGARDING REQUIRE-
8 MENTS FOR RIGHTS-OF-WAY FOR BROADBAND; AND DECLARING AN EMERGENCY AND
9 PROVIDING AN EFFECTIVE DATE.
10

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

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

14 40-516. LEGISLATIVE INTENT: ~~--~~ DIG ONCE POLICY. (1) It is the intent of
15 the legislature to recognize that the citizens of the state live and work in
16 a data-driven society and that the connectivity in Idaho's urban and rural
17 areas ~~are~~ is key for a thriving Idaho economy. ~~Broadband is a~~ Wired back-
18 bone and wired middle-mile are vital components in accomplishing broadband
19 connectivity throughout Idaho and are the focus of this act. Whether last-
20 mile broadband delivery to premises is achieved via wired or wireless infra-
21 structure is a choice that shall be governed by the ordinances of local au-
22 thorities. Last-mile wired broadband infrastructure provides internet ser-
23 vice that is faster, far more energy-efficient, and far less polluting than
24 last-mile wireless broadband infrastructure, which is why this choice must
25 be made by local authorities.

26 (2) The legislature recognizes and hereby declares that ~~broadband ser-~~
27 vice a "dig once" policy for wired backbone and wired middle-mile fiber optic
28 infrastructures throughout the entire state is in the overall public inter-
29 est for the state of Idaho in furtherance of the social and economic devel-
30 opment of the state, and the. The use of highway rights-of-way to support
31 broadband infrastructure and a "Dig Once Policy" wired backbone and wired
32 middle-mile fiber optic infrastructures furthers the overall public inter-
33 est.

34 (3) It is the intent of the legislature that the Idaho transportation
35 department develop rules, standards, and policies consistent with the "Dig
36 Once Policy" to facilitate the expansion of ~~broadband~~ wired backbone and
37 wired middle-mile fiber optic infrastructures with the cost-efficient,
38 orderly, and coordinated installation of ~~broadband infrastructure~~ wired
39 backbone and wired middle-mile fiber optic infrastructures on highway
40 rights-of-way and during roadway construction, while maintaining local con-
41 trol of such infrastructure, pursuant to the provisions of section 67-6502,

1 Idaho Code, in promoting the health, safety, and general welfare of the peo-
 2 ple of Idaho.

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

5 40-517. DEFINITIONS. As used in sections 40-515 through 40-520, Idaho
 6 Code:

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

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

17 ~~(3) "Broadband provider" means any entity that:~~

18 ~~(a) Provides broadband services, including but not limited to a~~
 19 ~~telecommunications provider, cable service provider, broadband~~
 20 ~~provider, cellular provider, political subdivision that provides~~
 21 ~~broadband services, electric cooperative that provides broadband~~
 22 ~~services, electric utility that provides broadband services, state~~
 23 ~~government entity that provides broadband services, tribal government~~
 24 ~~that provides broadband services, or internet service provider; or~~

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

28 (1) "Broadband infrastructure" can be categorized into four (4) groups
 29 based on distance covered, from the longest to shortest distance, and the
 30 means of wired or wireless delivery, as described in this subsection:

31 (a) Wired backbone broadband infrastructure, which often consists of
 32 high-capacity fiber-optic cables laid over hundreds or thousands of
 33 miles to connect countries, states, and other regions;

34 (b) Wired middle-mile broadband infrastructure, which often con-
 35 sists of fiber-optic cables laid over tens or hundreds of miles that,
 36 once connected to by an internet service provider, can help deliver
 37 high-speed internet service from the backbone to the last-mile;

38 (c) Wired last-mile broadband infrastructure, which often consists
 39 of fiber optics or coaxial cables that connect directly from the mid-
 40 dle-mile to a premises for wired broadband information service to
 41 wholesalers or end users, including but not limited to private homes,
 42 businesses, commercial establishments, schools, or public institu-
 43 tions; and

44 (d) Wireless last-mile broadband infrastructure, which often consists
 45 of poles, antennas, and other components to send radio signals from the
 46 middle-mile to dish antennas or other antennas on premises for wireless
 47 telecommunications and broadband information service via satellite or
 48 cellular service to wholesalers or end users, including but not limited

1 to private homes, businesses, commercial establishments, schools, or
 2 public institutions.

3 (2) "Broadband services" means high-bandwidth transmissions allowing
 4 high-speed internet access with low latency and the ability to simultane-
 5 ously transport multiple signals and traffic types at a minimum transmission
 6 speed of one hundred (100) megabits per second for downloads and one hundred
 7 (100) symmetrical megabits per second for uploads.

8 ~~(4)~~ (3) "Department" means the Idaho transportation department.

9 ~~(5)~~ (4) "Dig Once Policy" means a policy or practice that minimizes the
 10 number and scale of excavations or construction and costs when installing
 11 broadband infrastructure wired backbone and wired middle-mile fiber optic
 12 infrastructures in highway rights-of-way.

13 ~~(6)~~ (5) "Highway" means a road that is part of the state highway system
 14 as defined in section 40-120, Idaho Code.

15 (6) "Local authority" means a town, city, or county of this state.

16 (7) "Longitudinal access" means access to or use of any part of a right-
 17 of-way of a highway that extends generally parallel to the right-of-way for a
 18 total of one hundred (100) or more linear feet extending from the edge of the
 19 right-of-way nearest to the highway for a total of twenty (20) linear feet,
 20 or the maximum distance allowed by local ordinance, perpendicular to the in-
 21 side edge of the right-of-way.

22 (8) "Provider" means any entity that provides broadband services,
 23 including but not limited to a telecommunications provider, cable service
 24 provider, broadband provider, cellular provider, political subdivision
 25 that provides broadband services, electric cooperative that provides broad-
 26 band services, electric utility that provides broadband services, state
 27 government entity that provides broadband services, tribal government that
 28 provides broadband services, or internet service provider.

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

31 40-518. DIG ONCE POLICY NOTIFICATION AND PROJECT IDENTIFICATION. (1)
 32 The department shall develop on a competitively neutral basis a registry
 33 of ~~broadband~~ providers interested in installing ~~broadband infrastructure~~
 34 wired backbone and wired middle-mile fiber optic infrastructures along a
 35 highway. The department shall update the registry no less than once per
 36 year.

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

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

1 (a) That the project has been identified as suitable for coordination
2 with ~~broadband~~ providers;

3 (b) Of the ~~broadband~~ provider's opportunity to coordinate with the de-
4 partment to accommodate the installation of broadband infrastructure;
5 and

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

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

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

16 (6) The department shall make the final determination of the suit-
17 ability of a project to include installation of ~~broadband infrastructure~~
18 wired backbone and wired middle-mile fiber optic infrastructures and may
19 prescribe any conditions, requirements, restrictions, or other provisions
20 in furtherance of the "Dig Once Policy." Conditions, requirements, re-
21 strictions, or provisions prescribed pursuant to this subsection ~~may~~ shall
22 include but need not be limited to liability provisions, requirements re-
23 lated to the financial responsibilities for future relocation of broadband
24 infrastructure if relocation is necessary, ~~and~~ indemnification provisions,
25 compliance with the national environmental policy act, 42 U.S.C. 4321 et
26 seq., and compliance with any and all applicable state and federal laws and
27 regulations. The department may deny the installation of ~~broadband infra-~~
28 structure wired backbone and wired middle-mile fiber optic infrastructures
29 if the installation hinders or obstructs highway construction, maintenance,
30 or operational safety, ~~is~~ is contrary to statute, ~~or~~ or rule, or local ordi-
31 nance; or unduly delays or interferes with construction, maintenance, joint
32 trenching projects, or the repair or construction of water, wastewater,
33 electrical, or gas line facilities.

34 (7) The department shall preserve local zoning control over the rights-
35 of-way that pass through the jurisdictions of local authorities.

36 ~~(7)~~ (8) The department may install conduit for its own use where appro-
37 priate or in support of expanding ~~broadband infrastructure~~ wired backbone
38 and wired middle-mile fiber optic infrastructures in the state of Idaho.

39 ~~(8)~~ (9) The department shall promulgate rules for carrying out the
40 provisions of this section that are nondiscriminatory, neutral, fair, and
41 objective and that promote competition among ~~broadband~~ wired backbone and
42 wired middle-mile fiber optic infrastructures providers. Rules shall in-
43 clude, at a minimum:

44 (a) Procedures consistent with the "Dig Once Policy" for processing and
45 reviewing statements of interest received from a ~~broadband~~ provider by
46 the department. Consistent with the "Dig Once Policy," the department
47 shall issue rules that will restrict speculative practices that may un-
48 duly impact and congest the department's rights-of-way;

49 (b) A ~~broadband~~ provider shall be charged for the actual cost in-
50 curred by the department as a result of the installation of a ~~broadband~~

1 provider's ~~broadband infrastructure~~ wired backbone and wired mid-
 2 dle-mile fiber optic infrastructures. If there is more than one (1)
 3 ~~broadband~~ provider installing ~~broadband infrastructure~~ wired backbone
 4 and wired middle-mile fiber optic infrastructures, then each ~~broadband~~
 5 provider shall share equally in the common charges of the installation
 6 of ~~broadband~~ the infrastructure, including but not limited to trenching,
 7 boring, traffic controls, and make-ready costs;

8 (c) Criteria for identifying projects that would be suitable for the
 9 placement of ~~broadband infrastructure~~ wired backbone and wired middle-
 10 mile fiber optic infrastructures;

11 (d) Criteria for the installation of the department's own conduit.
 12 Rules may allow use of such conduit by ~~broadband~~ providers;

13 (e) Procedures and forms for permitting processes; and

14 (f) A contested case administrative appeals process, pursuant to the
 15 Idaho administrative procedure act, chapter 52, title 67, Idaho Code.

16 ~~(9)~~ (10) The department may not grant any longitudinal access under this
 17 section that results in a significant compromise of the safe, efficient, and
 18 convenient use of a highway for the traveling public or that violates a local
 19 ordinance.

20 SECTION 4. That Section [40-519](#), Idaho Code, be, and the same is hereby
 21 repealed.

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

24 40-520. RIGHTS-OF-WAY FOR BROADBAND. (1) ~~Except as provided in sub-~~
 25 ~~section (5) of this section, the department shall allow a broadband~~ The
 26 department shall allow a provider longitudinal use and access to the
 27 rights-of-way of a highway for the installation, operation, and maintenance
 28 of ~~broadband infrastructure~~ wired backbone and wired middle-mile fiber
 29 optic infrastructures only pursuant to subsections (5) and (6) of this sec-
 30 tion.

31 (2) The department shall enter into a license agreement with a
 32 ~~broadband~~ provider and issue a permit before granting it any longitudinal
 33 access under this section. Except as specifically provided by the agree-
 34 ment, a property interest in a right-of-way may not be granted under the
 35 provisions of this section. An agreement entered into by the department
 36 under this section:

37 (a) Shall include terms and conditions that are nondiscriminatory
 38 and are consistent with the public policy promoting the expansion of
 39 ~~broadband infrastructure~~ wired backbone and wired middle-mile fiber
 40 optic infrastructures in Idaho, such as liability provisions, require-
 41 ments related to the financial responsibilities for future relocation
 42 of underground ~~broadband infrastructure~~ wired backbone and wired mid-
 43 dle-mile fiber optic infrastructures if relocation is necessary, and
 44 indemnification provisions;

45 (b) Shall specify maintenance responsibilities for ~~broadband infra-~~
 46 ~~structure~~ wired backbone and wired middle-mile fiber optic infrastruc-
 47 tures being placed;

1 (c) May require that the department be allowed to utilize the ~~broadband~~
 2 ~~infrastructure wired backbone and wired middle-mile fiber optic infra-~~
 3 ~~structures~~ only for public safety warnings, road condition notifica-
 4 tions, and amber alerts to motorists on highways;

5 (d) May require that the ~~broadband~~ provider install conduit for
 6 nonexclusive use, in which the cost of the project shall be shared pro-
 7 portionally. Alternatively, if the department requires the ~~broadband~~
 8 provider to install only one (1) conduit of equal or smaller size of the
 9 conduit being installed exclusively for internal department purposes,
 10 then the department shall be responsible only for the costs of the addi-
 11 tional materials and labor for the installation of its own conduit. The
 12 department must keep all documents and records regarding the internal
 13 use of the conduit and make public such documents if requested. The
 14 department may not allow the use of its internal conduit to any other
 15 entity. If the department allows the use of internal conduit to another
 16 entity, then the department shall reimburse the ~~broadband~~ provider for
 17 half of the project costs;

18 ~~(e) Shall specify that the broadband provider shall own its broadband~~
 19 ~~infrastructure; and~~

20 ~~(f) (e) Shall specify that the use of the rights-of-way shall be nonex-~~
 21 ~~clusive-; and~~

22 (f) Shall recommend that local authorities own the broadband infra-
 23 structure if feasible.

24 (3) A ~~broadband~~ provider shall be responsible for the costs of in-
 25 stallling its own ~~broadband infrastructure wired backbone and wired mid-~~
 26 ~~dle-mile fiber optic infrastructures~~ on the department's right-of-way. If
 27 there is more than one (1) ~~broadband~~ provider installing ~~broadband infra-~~
 28 ~~structure wired backbone and wired middle-mile fiber optic infrastructures~~
 29 at the same project, then the ~~broadband~~ provider is responsible for its pro
 30 rata share of the cost.

31 (4) The department shall require the same fees from a ~~broadband~~
 32 provider under this section for longitudinal access to the right-of-way as
 33 a public utility defined under section 61-129, Idaho Code. However, fees
 34 charged to a cable provider shall be in accordance with applicable federal
 35 law.

36 (5) The department may not grant any longitudinal access under this
 37 section that results in a significant compromise of the safe, efficient, and
 38 convenient use of a highway for the traveling public or that violates a local
 39 ordinance.

40 (6) The department may install conduit for its own use where appropri-
 41 ate or in support of expanding ~~broadband infrastructure wired backbone and~~
 42 ~~wired middle-mile fiber optic infrastructures~~ in the state of Idaho.

43 (7) The department shall promulgate rules:

44 (a) Governing the installation, operation, and maintenance of
 45 ~~broadband infrastructure wired backbone and wired middle-mile fiber~~
 46 ~~optic infrastructures~~ granted longitudinal access pursuant to this
 47 section;

48 (b) Specifying the procedures for establishing an agreement for longi-
 49 tudinal access for a ~~broadband~~ provider;

1 (c) Specifying criteria for the installation of the department's own
2 conduit and use of such conduit by ~~broadband~~ providers consistent with
3 this section; and

4 (d) Providing for the relocation or removal of ~~broadband infrastruc-~~
5 ~~ture~~ wired backbone and wired middle-mile fiber optic infrastructures
6 for needed changes to a highway on the interstate system.

7 (8) Nothing in section 40-515, Idaho Code, through this section is in-
8 tended to preempt, diminish, or otherwise limit the authority of the depart-
9 ment over public rights-of-way.

10 SECTION 6. An emergency existing therefor, which emergency is hereby
11 declared to exist, this act shall be in full force and effect on and after
12 July 1, 2024.