
A BILL FOR AN ACT

RELATING TO TELECOMMUNICATIONS FACILITIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 206N, Hawaii Revised Statutes is
2 amended by adding a new part to be appropriately designated and
3 to read as follows:

4 **"PART . TELECOMMUNICATION FACILITY INSTALLATION**

5 **\$206N-A Definitions.** As used in this part, unless the
6 context requires otherwise:

7 "Broadband service" means the provision of access and
8 transport to the internet, computer processing, information
9 storage or protocol conversion at a rate of at least one megabit
10 per second in either the upstream or downstream direction, as
11 established by the Federal Communications Commission.

12 "Department" means the department of transportation.

13 "Director" means the director of transportation.

14 "Longitudinal access" means access to or use of any part of
15 a right-of-way of a highway that extends generally parallel to
16 the right-of-way for a total of thirty or more linear meters.

17 "Provider" means an entity that:



(1) Provides for the sale or resale of wholesale or retail broadband services in the State and that:

(A) Is recognized as an eligible telecommunications carrier by the public utilities commission; or

(B) Meets the Federal Communications Commission and industry carrier class service guidelines; or

(2) Is a political subdivision that has statutory authority to provide communications services.

"Provider" includes a video service provider.

"Telecommunication facility" means any 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.

§206N-B Telecommunication facility installation; highway construction projects; expanded use; action in court; just compensation; excavation; notice. (a) The director, or a provider with permission from the department, may install telecommunication facilities pursuant to this part.



1 (b) The director may lease a telecommunication facility to
2 providers pursuant to this part and coordinate with providers
3 regarding planning or relocating a telecommunication facility
4 and any related provider telecommunication facilities within the
5 right-of-way at the provider's expense. The director may limit
6 provider access to any broadband telecommunication facilities
7 within the right-of-way for initial installation and infrequent
8 access for maintenance purposes and may take other actions
9 necessary to maintain highway safety.

10 (c) The director, or a provider with permission from the
11 department, may install a telecommunication facility without
12 regard to the timing of a related existing road construction
13 project.

14 (d) For the purposes of installing and operating a
15 telecommunication facility, if the department, directly or
16 through a provider, expands the use of an existing easement or
17 other property right that is owned, held, or used by the
18 department for transportation purposes and the expanded use
19 reduces the fair market value of the property over which the
20 easement or other property right runs, the property owner is
21 entitled to just compensation from the department or provider.



1 (e) No later than eighteen months after the date the
2 department provides notice to a property owner of the expanded
3 use, the property owner seeking just compensation based on the
4 decrease in value shall commence an action in the circuit court
5 of the circuit in which the property in question is located.

6 (f) Notice under subsection (e) is provided if sent by
7 first class mail to the last known address of the property
8 owner.

9 (g) In an action for just compensation based on a claim of
10 expanded use for installation of a telecommunication facility:

11 (1) The court or jury shall ascertain and assess the
12 decrease in value of the property based on the
13 difference between the fair market value of the entire
14 parcel immediately before the expanded use and the
15 fair market value of the entire parcel immediately
16 after the expanded use;

17 (2) Evidence of revenues or profits derived from or the
18 rental value of an assembled communications corridor
19 shall not be admissible in determining fair market
20 value; and



1 (3) On payment of just compensation, the expanded use is
2 deemed fully vested in the department and the easement
3 including the expanded use shall run with the land.

4 (h) A class action may not be maintained against the
5 department or provider in any action for just compensation based
6 on a claim of expanded use for the installation of a
7 telecommunication facility.

8 (i) Actions for just compensation as described in this
9 section include trespass, inverse condemnation, and other
10 similar causes of action.

11 (j) This section shall not prohibit the department or a
12 provider from reaching an agreement with a property owner to
13 waive a claim for just compensation related to expanded use for
14 the installation of a telecommunication facility or from
15 acquiring the right to use the property by other lawful means.

16 (k) If excavation is required to install fiber optic cable
17 or other underground telecommunication facilities within an
18 existing easement or other property right that is owned, held or
19 used by the department for transportation purposes, a provider
20 with consent of the department shall provide written notice to
21 the property owner of the expanded use for installation of the



1 telecommunication facility before excavation may begin. The
2 provider shall send the notice, by first class mail to the last
3 known address of the property owner. A notice sent to the
4 property owner entitled to notice under this subsection must
5 include the following:

- 6 (1) The name and mailing address of the provider;
- 7 (2) The mailing address, telephone number and email
8 address of a representative of the provider;
- 9 (3) A summary statement describing the activities to be
10 conducted during the excavation; and
- 11 (4) The approximate dates when the excavation will start
12 and end.

13 (1) The notice prescribed in subsection (k) is not
14 required before the provider may use an easement or other
15 property right that includes an authorization for excavation for
16 the purposes of installing a telecommunication facility. The
17 failure to provide the notice prescribed in subsection (k):

- 18 (1) Prohibits the provider from proceeding with an
19 excavation until the notice is provided; and



(2) Shall not invalidate or prevent the department from expanding the use of the easement or property right as otherwise described in this section.

(m) Compensation provided by this section shall be paid from the smart highway corridor special fund established by section 206N-G.

§206N-C Management of state-owned telecommunication facilities. The department may enter into an agreement with a public or private entity for the purpose of using, managing, or operating state-owned telecommunication facilities and coordinating activities in this State relating to planning, mapping, and procuring broadband service.

§206N-D Longitudinal telecommunication access in the highway system; agreements; restrictions; rulemaking. (a) Except as provided in subsection (e), the department may allow a provider longitudinal access to the right-of-way of a highway for the installation, operation, and maintenance of a telecommunication facility.

(b) The department shall enter into an agreement with a provider and issue a permit before granting the provider any longitudinal access.



1 (c) Except as specifically provided by an agreement
2 pursuant to subsection (b), a property interest in a right-of-
3 way may not be granted under this section.

4 (d) An agreement entered by the department under this
5 section shall:

6 (1) Specify the terms and conditions for renegotiating the
7 agreement;

8 (2) Specify maintenance responsibilities for each
9 telecommunication facility;

10 (3) Be nonexclusive; and

11 (4) Be limited to a maximum term of thirty years.

12 (e) The department may not grant any longitudinal access
13 that results in a significant compromise of the safe, efficient,
14 and convenient use of the highway for the traveling public.

15 (f) The director shall adopt rules that:

16 (1) Govern the installation, operation, and maintenance of
17 a telecommunication facility granted longitudinal
18 access under this section;

19 (2) Specify the procedures for establishing an agreement
20 for longitudinal access for a provider; and



- 1 (3) Provide for the relocation or removal of a
2 telecommunication facility for:
3 (A) Needed changes to a highway;
4 (B) Expiration of an agreement; or
5 (C) Breach of an agreement.

6 **§206N-E Longitudinal telecommunication access to highway**
7 **system right-of-way; compensation.** (a) The department shall
8 require compensation from a provider for longitudinal access to
9 the right-of-way of a state highway. The compensation shall be:

- 10 (1) Fair and reasonable;
11 (2) Competitively neutral;
12 (3) Nondiscriminatory;
13 (4) Open to public inspection;
14 (5) Established to promote access by multiple providers;
15 (6) Established for zones of this State;
16 (7) Established to encourage the deployment of digital
17 infrastructure within this State;
18 (8) A lump sum payment or annual installment, at the
19 option of the provider; and
20 (9) Set pursuant to subsection (h).



1 (b) The compensation may be cash, in-kind compensation, or
2 a combination thereof.

3 (c) In-kind compensation requires the agreement of both
4 the provider and the department.

5 (d) The department shall determine the present value of
6 any in-kind compensation based on the incremental cost to the
7 provider.

8 (e) The value of in-kind compensation or a combination of
9 cash and in-kind compensation shall be equal to or greater than
10 the amount of cash compensation that would be charged if the
11 compensation was cash only.

12 (f) The department shall provide for the proportionate
13 sharing of costs among the department and providers for joint
14 trenching or trench-sharing based on the amount of conduit
15 innerduct space that is authorized in the agreement for the
16 trench.

17 (g) If two or more providers are required to share a
18 single trench, each provider in the trench shall share the cost
19 and benefits of the trench pursuant to subsection (f) of this
20 section on a fair, reasonable, competitively neutral, and
21 nondiscriminatory basis.



1 (h) The department, by rule, shall establish a schedule of
2 rates of compensation for any longitudinal access granted under
3 this section.

4 (i) The department may not pay any cost of relocation of a
5 private telecommunication facility granted longitudinal access
6 to the right-of-way of a highway on the interstate system under
7 this section.

8 (j) The department shall deposit the moneys collected
9 pursuant to this section in the smart highway corridor special
10 fund established by section 206N-G.

11 (k) Any telecommunications capacity acquired as in-kind
12 compensation shall be used exclusively for the further
13 development of telecommunications that serve state agencies and
14 enhance connectivity for higher and public education and may not
15 be sold or leased in competition with telecommunication or
16 internet service providers.

17 (l) A person may not use compensation paid to the
18 department pursuant to this section as evidence of the market or
19 other value of the access for any other purpose, including
20 condemnation proceedings, other litigation, the application of



1 rates of taxation, or the establishment of franchise fees
2 relating to longitudinal access rights.

3 **§206N-F Use and access to state-owned conduit;**
4 **compensation.** (a) The department may offer a provider use of
5 and access to its spare conduit and related facilities if the
6 department does the following:

- 7 (1) Determines the spare conduit and related facilities
8 are not needed for highway purposes;
9 (2) Receives fair compensation for the use of and access
10 to the spare conduit and related facilities; and
11 (3) Offers the use and access in a competitively neutral
12 and nondiscriminatory manner as to all similarly
13 situated providers.

14 (b) The department shall establish rates of compensation
15 for the use of and access to its spare conduit to ensure that
16 the department receives fair compensation for the value of its
17 underground installations of conduit and related facilities.
18 The compensation shall be fair and reasonable and charged in a
19 competitively neutral and nondiscriminatory manner to all
20 similarly situated providers.



1 (c) Any compensation pursuant to this section must be set
2 forth in an agreement entered between the department and the
3 provider.

4 (d) The department shall determine the annual compensation
5 to be paid by each provider for the use of its conduit and
6 related facilities based on the present value of the estimated,
7 reasonable cost to the department of trenching to place conduit,
8 fiber and other related facilities.

9 (e) The department may accept in-kind compensation for the
10 use of and access to its spare conduit and related facilities in
11 accordance with the valuation procedures prescribed in section
12 206N-E.

13 (f) The department shall deposit the moneys collected
14 pursuant to this section in the smart highway corridor special
15 fund established by section 206N-G.

16 (g) Nothing in this section shall require the department
17 to receive compensation from any budget unit of this State for
18 use of and access to conduit and related facilities.

19 **§206N-G Smart highway corridor special fund.** (a) There
20 is established in the state treasury the smart highway corridor
21 special fund, into which shall be deposited:



- 1 (1) Appropriations by the legislature;
- 2 (2) Moneys received from the sales or leases of rights-of-
- 3 ways, telecommunication facilities, and
- 4 telecommunication services pursuant to sections 206N-E
- 5 and 206N-F; and
- 6 (3) Moneys received from providers to reimburse costs for
- 7 compensation claims pursuant to section 206N-B.
- 8 (b) The smart highway corridor special fund shall be
- 9 administered by the department and shall be used for the
- 10 following purposes:
- 11 (1) Maintenance, operation, and expansion of
- 12 telecommunication facilities and telecommunication
- 13 services within rights-of-way that are managed by the
- 14 department; and
- 15 (2) Payment of compensation pursuant to section 206N-B.
- 16 (c) All interest derived from the deposit and investment
- 17 of moneys in the smart highway corridor special fund shall be
- 18 credited to the fund. At the end of any fiscal year, all
- 19 unexpended and unencumbered moneys shall remain in the smart
- 20 highway corridor special fund and shall not be credited or
- 21 transferred to the general fund or any other funds.



(d) On notice from the department, the director of finance shall invest and divest the moneys in the smart highway corridor special fund as provided by section 36-21, and moneys earned from investment shall be credited to the fund."

SECTION 2. Chapter 264, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§264- Lease of areas above and below highways; exceptions. (a) The director may lease to any public agency, as defined in section 103D-1001, or to a private person or entity the use of areas above or below state highways for telecommunication purposes only, subject to reservations, restrictions, and conditions the director deems necessary to assure adequate protection of the safety and integrity of highway facilities and to secure the safety of motorists.

Before entering the lease, the director shall:

(1) Determine that the proposed use by a lessee is not in conflict with the zoning regulations of the local government concerned; and

(2) Make a lease with a private person or entity only after competitive sealed bidding pursuant to 103D-302.



1 (b) The director may reject any or all bids or call for
2 additional bids if, in the opinion of the board, the bids
3 submitted are not in the best interest of this State. The
4 director shall not accept a bid that does not yield at least a
5 fair rental value for the property to the state highway fund.

6 (c) The department shall deposit the revenues derived from
7 the leases in the state highway fund.

8 (d) The authority granted to the director by this section
9 shall not include the right to lease public rights-of-way to
10 public service corporations, and this section shall not affect
11 any rights of public service corporations to use public rights-
12 of-way or to obtain permits or easements associated with public
13 uses of public rights-of-way."

14 SECTION 3. Section 206N-1, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:

16 "(a) Subject to subsection (b), this chapter shall apply
17 only to activities of a communications service provider or
18 activities of a provider of telecommunication facilities to
19 deploy small wireless facilities and to modified or replaced
20 state or county utility poles associated with small wireless
21 facilities.



1 Except as to the state or county permitting authority
2 related to utility poles, this chapter shall not be construed to
3 apply to:

- 4 (1) Utility poles or other utility infrastructure solely
5 owned by investor-owned utility companies;
- 6 (2) Investor owned utility companies' utility poles in
7 which the State or county has an ownership interest;
- 8 (3) Airport buildings; or
- 9 (4) Buildings whose use is principally for public safety
10 purposes."

11 SECTION 4. Chapter 206N, Hawaii Revised Statutes, is
12 amended by designating sections 206N-1 to 206N-10 as part I,
13 entitled "General Provisions".

14 SECTION 5. The department of transportation shall
15 promulgate rules for the purposes of this Act, pursuant to
16 chapter 91, within one year from the effective date of this Act.

17 SECTION 6. In codifying the new sections added by section
18 1 of this Act, the revisor of statutes shall substitute
19 appropriate section numbers for the letters used in designating
20 the new sections in this Act.

21



- 1 SECTION 7. New statutory material is underscored.
- 2 SECTION 8. This Act shall take effect on January 1, 2050.



Report Title:

Telecommunications Facilities; Installation; Lease; Management; Highways; Longitudinal Access; Smart Highway Corridor Special Fund

Description:

Allows the Department of Transportation to: (1) Install and lease telecommunication facilities; (2) Contract for the installation, lease, and management of telecommunication facilities; and (3) Grant longitudinal access to the right-of-way of a highway for the installation, operation, and maintenance of a telecommunication facility under certain conditions. Requires the Director of Transportation to adopt certain administrative rules. Authorizes the Director of Transportation to offer a broadband service provider use of and access to its spare conduits and related telecommunication facilities under certain conditions. Grants a property owner the right of just compensation from the Department of Transportation or the broadband provider for any decrease in land value due to the expanded use of an existing easement to install or operate a telecommunication facility. Creates the Smart Highway Corridor Special Fund. Exempts the Department of Transportation from rulemaking requirements for one year for the purposes of this Act. Effective 1/1/2050. (SD1)

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