

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 145

BY TRANSPORTATION AND DEFENSE COMMITTEE

AN ACT

1 RELATING TO BROADBAND; AMENDING SECTION 40-516, IDAHO CODE, TO REVISE PRO-
2 VISIONS REGARDING LEGISLATIVE INTENT FOR THE DIG ONCE POLICY; AMENDING
3 SECTION 40-517, IDAHO CODE, TO DEFINE TERMS; AMENDING SECTION 40-518,
4 IDAHO CODE, TO REVISE PROVISIONS REGARDING DIG ONCE POLICY NOTIFICATION
5 AND PROJECT IDENTIFICATION; AMENDING SECTION 40-520, IDAHO CODE, TO RE-
6 VISE PROVISIONS REGARDING RIGHTS-OF-WAY FOR BROADBAND; AND DECLARING
7 AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.
8

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

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

12 40-516. LEGISLATIVE INTENT: DIG ONCE POLICY. (1) It is the intent of
13 the legislature to recognize that the citizens of the state live and work in
14 a data-driven society and that the connectivity in Idaho's urban and rural
15 areas are key for a thriving Idaho economy. Broadband is a vital component in
16 accomplishing connectivity throughout Idaho.

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

22 (3) It is the intent of the legislature that the Idaho transportation
23 department develop rules, standards, and policies consistent with the "Dig
24 Once Policy" to facilitate the expansion of broadband with the cost-effi-
25 cient, orderly, and coordinated installation of broadband infrastructure on
26 highway rights-of-way and during roadway construction.

27 (4) It is also the intent of the legislature that single county-wide
28 highway districts formed pursuant to chapter 14, title 40, Idaho Code, de-
29 velop nondiscriminatory and competitively neutral rules, standards, and
30 policies consistent with the "Dig Once Policy" to facilitate the expansion
31 of broadband with the cost-efficient, orderly, and coordinated installation
32 of broadband infrastructure on highway rights-of-way and during roadway
33 construction.

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

36 40-517. DEFINITIONS. As used in sections 40-515 through 40-520, Idaho
37 Code:

38 (1) "Broadband" means wide bandwidth communication transmissions al-
39 lowing high speed internet access with an ability to simultaneously trans-
40 port multiple signals and traffic types at a minimum transmission speed of

1 one hundred (100) megabits per second for downloads and twenty (20) megabits
2 per second for uploads.

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

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

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

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

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

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

23 (6) "District" means a single county-wide highway district formed pur-
24 suant to chapter 14, title 40, Idaho Code.

25 ~~(6)~~ (7) "Highway" means a road that is part of the state or district
26 highway system.

27 ~~(7)~~ (8) "Longitudinal access" means access to or use of any part of a
28 right-of-way of a highway that extends generally parallel to the right-of-
29 way for a total of one hundred (100) or more linear feet.

30 (9) "Micro-trenching" means a highway cut anywhere in the traveled sur-
31 face of a road or gutter creating a narrow trench no more than two (2) inches
32 wide, at a depth of less than eighteen (18) inches.

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 and district shall develop on a competitively neutral basis
37 a registry of broadband providers interested in installing broadband infra-
38 structure along a highway. The department and district shall update the reg-
39 istry no less than once per year.

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

1 (3) For each project identified under subsection (2) of this section,
2 the department or district shall timely notify the broadband providers on
3 the registry 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 or district to accommodate the installation of broadband in-
8 frastructure; and

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

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

16 (5) For each project for which the department or district provides no-
17 tice under this section, the department or district shall engage with each
18 broadband provider that submits a statement of interest to determine whether
19 accommodation of installation of broadband infrastructure is appropriate.

20 (6) The department or district shall make the final determination of
21 the suitability of a project to include installation of broadband infra-
22 structure and may prescribe any conditions, requirements, restrictions,
23 or other provisions in furtherance of the "Dig Once Policy." Conditions,
24 requirements, restrictions, or provisions prescribed pursuant to this
25 subsection may include but need not be limited to liability provisions, re-
26 quirements related to the financial responsibilities for future relocation
27 of broadband infrastructure if relocation is necessary, and indemnifica-
28 tion provisions. The department or district may deny the installation of
29 broadband infrastructure if the installation hinders or obstructs highway
30 construction, maintenance, or operational safety, is contrary to statute or
31 rule, 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 may install conduit for its own use where appro-
35 priate or in support of expanding broadband infrastructure in the state of
36 Idaho.

37 (8) The department and district shall promulgate and follow rules for
38 carrying out the provisions of this section that are nondiscriminatory, neu-
39 tral, fair, and objective as between all broadband providers and that pro-
40 mote competition among broadband providers. Rules shall include, at a mini-
41 mum:

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

48 (b) A requirement that a broadband provider shall be charged for the
49 actual cost incurred by the department or district as a result of the
50 installation of a broadband provider's broadband infrastructure. If

1 there is more than one (1) broadband provider installing broadband
 2 infrastructure, then each broadband provider shall share equally in
 3 the common charges of the installation of broadband infrastructure,
 4 including but not limited to trenching, boring, traffic controls, and
 5 make-ready costs;

6 (c) Criteria for identifying projects that would be suitable for the
 7 placement of broadband infrastructure;

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

10 (e) Procedures and forms for permitting processes; ~~and~~

11 (f) A prohibition on districts allowing micro-trenching of a highway;
 12 and

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

16 (9) The department or district may not grant any longitudinal access
 17 under this section that results in a significant compromise of the safe, ef-
 18 ficient, and convenient use of a highway for the traveling public.

19 SECTION 4. That Section 40-520, Idaho Code, be, and the same is hereby
 20 amended to read as follows:

21 40-520. RIGHTS-OF-WAY FOR BROADBAND. (1) Except as provided in sub-
 22 section (5) of this section, the department or district shall allow a broad-
 23 band provider longitudinal use and access to the rights-of-way of a highway
 24 for the installation, operation, and maintenance of broadband infrastruc-
 25 ture.

26 (2) The department or district shall enter into a license agreement
 27 with a broadband provider and issue a permit before granting it any longi-
 28 tudinal access under this section. Except as specifically provided by the
 29 agreement, a property interest in a right-of-way may not be granted under the
 30 provisions of this section. An agreement entered into by the department or
 31 district under this section:

32 (a) Shall include terms and conditions that are nondiscriminatory as
 33 among broadband providers and are consistent with the public policy
 34 promoting the expansion of broadband infrastructure in Idaho, such as
 35 liability provisions, requirements related to the financial responsi-
 36 bilities for future relocation of underground broadband infrastructure
 37 if relocation is necessary, and indemnification provisions;

38 (b) Shall specify maintenance responsibilities for broadband infra-
 39 structure being placed;

40 (c) May require that the department be allowed to utilize the broadband
 41 infrastructure only for public safety warnings, road condition notifi-
 42 cations, and amber alerts to motorists on highways;

43 ~~May~~ With respect to the department, the agreement may require that
 44 the broadband provider install conduit for nonexclusive use, in which
 45 the cost of the project shall be shared proportionally. Alternatively,
 46 if the department requires the broadband provider to install only one
 47 (1) conduit of equal or smaller size of the conduit being installed ex-
 48 clusively for internal department purposes, then the department shall
 49 be responsible only for the costs of the additional materials and labor

1 for the installation of its own conduit. The department must keep all
2 documents and records regarding the internal use of the conduit and make
3 public such documents if requested. The department may not allow the
4 use of its internal conduit to any other entity. If the department al-
5 lows the use of internal conduit to another entity, then the department
6 shall reimburse the broadband provider for half of the project costs;

7 (e) Shall specify that the broadband provider shall own its broadband
8 infrastructure; and

9 (f) Shall specify that the use of the rights-of-way shall be nonexclu-
10 sive.

11 (3) A broadband provider shall be responsible for the costs of in-
12 stalling its own broadband infrastructure on the department's or the
13 district's right-of-way. If there is more than one (1) broadband provider
14 installing broadband infrastructure at the same project, then the broadband
15 provider is responsible for its pro rata share of the cost.

16 (4) The department or district shall require the same fees from a broad-
17 band provider under this section for longitudinal access to the right-of-way
18 as a public utility defined under section 61-129, Idaho Code. However, fees
19 charged to a cable provider shall be in accordance with applicable federal
20 law.

21 (5) The department or district may not grant any longitudinal access
22 under this section that results in a significant compromise of the safe, ef-
23 ficient, and convenient use of a highway for the traveling public.

24 (6) The department may install conduit for its own use where appro-
25 priate or in support of expanding broadband infrastructure in the state of
26 Idaho.

27 (7) The department and district shall promulgate rules:

28 (a) Governing the installation, operation, and maintenance of broad-
29 band infrastructure granted longitudinal access pursuant to this sec-
30 tion;

31 (b) Specifying the procedures for establishing an agreement for longi-
32 tudinal access for a broadband provider;

33 (c) Specifying criteria for the installation of the department's own
34 conduit and use of such conduit by broadband providers consistent with
35 this section. The provisions of this paragraph shall apply only to the
36 department; and

37 (d) Providing for the relocation or removal of broadband infrastruc-
38 ture for needed changes to a highway on the interstate system.

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

42 SECTION 5. An emergency existing therefor, which emergency is hereby
43 declared to exist, this act shall be in full force and effect on and after
44 July 1, 2025.