

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 640, As Amended in the Senate

BY TRANSPORTATION AND DEFENSE COMMITTEE

AN ACT

1 RELATING TO THE IDAHO BROADBAND DIG ONCE AND RIGHT-OF-WAY ACT; AMENDING  
2 CHAPTER 5, TITLE 40, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 40-515,  
3 IDAHO CODE, TO PROVIDE A SHORT TITLE; AMENDING CHAPTER 5, TITLE 40,  
4 IDAHO CODE, BY THE ADDITION OF A NEW SECTION 40-516, IDAHO CODE, TO PRO-  
5 VIDE LEGISLATIVE INTENT REGARDING A DIG ONCE POLICY; AMENDING CHAPTER  
6 5, TITLE 40, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 40-517, IDAHO  
7 CODE, TO DEFINE TERMS; AMENDING CHAPTER 5, TITLE 40, IDAHO CODE, BY THE  
8 ADDITION OF A NEW SECTION 40-518, IDAHO CODE, TO ESTABLISH PROVISIONS  
9 REGARDING A DIG ONCE POLICY AND PROJECT IDENTIFICATION; AMENDING CHAP-  
10 TER 5, TITLE 40, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 40-519,  
11 IDAHO CODE, TO PROVIDE THAT BROADBAND PROVIDERS ACTING IN ACCORDANCE  
12 WITH THE DIG ONCE POLICY SHALL NOT BE ASSESSED FAIR MARKET VALUE; AMEND-  
13 ING CHAPTER 5, TITLE 40, IDAHO CODE, BY THE ADDITION OF A NEW SECTION  
14 40-520, IDAHO CODE, TO ESTABLISH PROVISIONS REGARDING RIGHTS-OF-WAY  
15 FOR BROADBAND; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE  
16 DATE.  
17

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

19 SECTION 1. That Chapter 5, Title 40, Idaho Code, be, and the same is  
20 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
21 ignated as Section 40-515, Idaho Code, and to read as follows:

22 40-515. SHORT TITLE. This section through section 40-520, Idaho Code,  
23 shall be known and may be cited as the "Idaho Broadband Dig Once and Right-of-  
24 Way Act."

25 SECTION 2. That Chapter 5, Title 40, Idaho Code, be, and the same is  
26 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
27 ignated as Section 40-516, Idaho Code, and to read as follows:

28 40-516. LEGISLATIVE INTENT: DIG ONCE POLICY. (1) It is the intent of  
29 the legislature to recognize that the citizens of the state live and work in  
30 a data-driven society and that the connectivity in Idaho's urban and rural  
31 areas are key for a thriving Idaho economy. Broadband is a vital component in  
32 accomplishing connectivity throughout Idaho.

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

38 (3) It is the intent of the legislature that the Idaho transportation  
39 department develop rules, standards, and policies consistent with the "Dig  
40 Once Policy" to facilitate the expansion of broadband with the cost-effi-

1 cient, orderly, and coordinated installation of broadband infrastructure on  
2 highway rights-of-way and during roadway construction.

3 SECTION 3. That Chapter 5, Title 40, Idaho Code, be, and the same is  
4 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
5 ignated as Section 40-517, Idaho Code, and to read as follows:

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

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

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

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

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

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

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

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

33 (6) "Highway" means a road that is part of the state highway system.

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

37 SECTION 4. That Chapter 5, Title 40, Idaho Code, be, and the same is  
38 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
39 ignated as Section 40-518, Idaho Code, and to read as follows:

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

45 (2) The department shall identify potential projects managed by the de-  
46 partment, either self-performed by the department or performed under con-  
47 tract, on highways under the department's jurisdiction for which notice un-

1 der subsection (3) of this section is required. Potential projects eligible  
2 for identification shall include projects that involve the construction of  
3 underground infrastructure, road construction, or other work that will re-  
4 sult in longitudinal access that could reasonably include, or prepare for,  
5 the installation of broadband infrastructure consistent with the "Dig Once  
6 Policy."

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

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

12 (b) Of the broadband provider's opportunity to coordinate with the de-  
13 partment to accommodate the installation of broadband infrastructure;  
14 and

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

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

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

25 (6) The department shall make the final determination of the suitabil-  
26 ity of a project to include installation of broadband infrastructure and may  
27 prescribe any conditions, requirements, restrictions, or other provisions  
28 in furtherance of the "Dig Once Policy." Conditions, requirements, restric-  
29 tions, or provisions prescribed pursuant to this subsection may include but  
30 need not be limited to liability provisions, requirements related to the fi-  
31 nancial responsibilities for future relocation of broadband infrastructure  
32 if relocation is necessary, and indemnification provisions. The department  
33 may deny the installation of broadband infrastructure if the installation  
34 hinders or obstructs highway construction, maintenance, or operational  
35 safety, is contrary to statute or rule, or unduly delays or interferes with  
36 construction, maintenance, joint trenching projects, or the repair or con-  
37 struction of water, wastewater, electrical, or gas line facilities.

38 (7) The department may install conduit for its own use where appro-  
39 priate or in support of expanding broadband infrastructure in the state of  
40 Idaho.

41 (8) The department shall promulgate rules for carrying out the provi-  
42 sions of this section that are nondiscriminatory, neutral, fair, and objec-  
43 tive and that promote competition among broadband providers. Rules shall  
44 include, at a minimum:

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

1 (b) A broadband provider shall be charged for the actual cost in-  
 2 curred by the department as a result of the installation of a broadband  
 3 provider's broadband infrastructure. If there is more than one (1)  
 4 broadband provider installing broadband infrastructure, then each  
 5 broadband provider shall share equally in the common charges of the in-  
 6 stallation of broadband infrastructure, including but not limited to  
 7 trenching, boring, traffic controls, and make-ready costs;

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

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

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

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

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

18 SECTION 5. That Chapter 5, Title 40, Idaho Code, be, and the same is  
 19 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
 20 ignated as Section 40-519, Idaho Code, and to read as follows:

21 40-519. PROVIDER SHALL NOT BE ASSESSED FAIR MARKET VALUE. A broadband  
 22 provider installing broadband infrastructure in accordance with sections  
 23 40-515 through 40-520, Idaho Code, shall not be assessed fair market value.

24 SECTION 6. That Chapter 5, Title 40, Idaho Code, be, and the same is  
 25 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
 26 ignated as Section 40-520, Idaho Code, and to read as follows:

27 40-520. RIGHTS-OF-WAY FOR BROADBAND. (1) Except as provided in sub-  
 28 section (5) of this section, the department shall allow a broadband provider  
 29 longitudinal use and access to the rights-of-way of a highway for the instal-  
 30 lation, operation, and maintenance of broadband infrastructure.

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

37 (a) Shall include terms and conditions that are nondiscriminatory and  
 38 are consistent with the public policy promoting the expansion of broad-  
 39 band infrastructure in Idaho, such as liability provisions, require-  
 40 ments related to the financial responsibilities for future relocation  
 41 of underground broadband infrastructure if relocation is necessary,  
 42 and indemnification provisions;

43 (b) Shall specify maintenance responsibilities for broadband infra-  
 44 structure being placed;

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

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

14 (e) Shall specify that the broadband provider shall own its broadband  
15 infrastructure; and

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

18 (3) A broadband provider shall be responsible for the costs of in-  
19 stallling its own broadband infrastructure on the department's right-of-way.  
20 If there is more than one (1) broadband provider installing broadband infra-  
21 structure at the same project, then the broadband provider is responsible  
22 for its pro rata share of the cost.

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

28 (5) The department may not grant any longitudinal access under this  
29 section that results in a significant compromise of the safe, efficient, and  
30 convenient use of a highway for the traveling public.

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

34 (7) The department shall promulgate rules:

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

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

40 (c) Specifying criteria for the installation of the department's own  
41 conduit and use of such conduit by broadband providers consistent with  
42 this section; and

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

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

48 SECTION 7. An emergency existing therefor, which emergency is hereby  
49 declared to exist, this act shall be in full force and effect on and after  
50 July 1, 2022.