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Civil Justice
Commerce, Insurance, and Economic Development
Education
Energy, Environment, and Agriculture
Federal Relations
Health and Human Services
International Relations
Public Safety and Elections
Tax and Fiscal Policy
Telecommunications and Information Technology

Print this Page
Text-Only Page
Email this Page

Home → Model Legislation → Telecommunications and Information Technology

Broadband and Telecommunications Deployment Act

Summary

The Legislature recognizes that state and local units of government have an important role in managing the public rights-of-way and public lands and waterways within their jurisdiction and control. While recognizing this important governmental function, the Legislature also finds that prompt, non-discriminatory access to public rights-of-way (as defined herein) by telecommunications providers on reasonable terms and conditions, including at cost-based fees, is essential to facilities-based competition, the deployment of advanced telecommunications and broadband networks, and the implementation of network redundancy necessary to protect against network outages and to ensure the safety and security of the public. Accordingly, in enacting the Broadband and Telecommunications Deployment Act, the Legislature, while preserving the authority of state and local units of government to manage the public rights-of-way under their jurisdiction or control, seeks to provide greater clarity regarding conditions and fees that can lawfully be imposed on telecommunications providers relating to their use of such public rights-of-way. The Legislature thus seeks to ensure that the practices of state and local governmental units with respect to access to these public rights-of-way for the installation of telecommunications facilities do not go beyond legitimate management activities so as to create barriers to the deployment of advanced telecommunications and broadband networks.

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The people of the State of ____ do enact as follows:

Section 1. Short Title.

This Act shall be known as the “Broadband and Telecommunications Deployment Act.”

Section 2. Legislative Findings and Declarations.

To encourage the rapid deployment of advanced telecommunications and broadband networks, while recognizing the role of state and local units of government in managing the public rights-of-way within their jurisdiction, the Legislature finds and declares all of the following:

(a) all entities providing intrastate, interstate or international telecommunications or telecommunications services or deploying facilities to be used directly or indirectly in the provision of such services shall have access to and use of all public rights-of-way within the State in connection with the construction and operation of their networks;

(b) that state and local units of government controlling such rights-of-way shall issue permits for access to and use of public rights-of-way within a fixed and reasonable time to telecommunications providers, not to exceed thirty (30) days from the date of application for such permit, and that no additional authorization, franchise or agreement may be required for access to public rights-of-way;

(c) that revenue-based fees and excessive per-foot charges are a barrier to deployment, and that fees shall be limited to the actual and direct costs associated with managing the public rights-of-way, as further discussed in this Act.

(d) that units of government shall not be permitted to use control over public rights-of-way to impose an additional tier of regulation on providers or to require terms and conditions that are unrelated to the actual management of the public rights-of-way, as further discussed in this Act.

(e) that reasonable limits shall be placed on certain management-related permit terms, including those relating to indemnification and bonding requirements;

(f) that units of governmental shall not discriminate in their treatment of providers over the terms and conditions of access to public rights-of-way; and

(g) that telecommunications providers shall have the ability to obtain expedited relief from the courts [or State PUC] for rights-of-way practices that are inconsistent with this Act, and bring existing permits and authorizations into compliance with this Act.

Section 3. Definitions.

(a) “Unit of government” means the State, any county, city, town, or village within the State, or any subdivision, agency, department, or instrumentality of the State or of any such county, city, town, or village.
individual project performance bond naming the unit of government as an obligee for

(1) A unit of government may require a telecommunications provider to provide an individual project performance bond naming the unit of government as an obligee for
the cost to restore the public rights-of-way to its condition prior to the provider’s construction of the telecommunications facilities in the public rights-of-way under a permit. In the event that the unit of government requires such a performance bond, the bond shall not exceed the provider’s good faith estimate of the cost to restore the public rights-of-way to its condition prior to the construction of such telecommunications facilities in the public rights-of-way. The performance bond shall terminate thirty (30) days following completion of restoration of the affected public rights-of-way but no later than one year past the completion of restoration. If a unit of government requires a telecommunications provider to provide a construction bond at the onset of an individual project, once the construction is complete the construction bond may revert to 10% of the construction bond amount to satisfy maintenance and restoration.

(2) The unit of government shall allow a telecommunications provider, at its option, to provide a blanket bond covering multiple projects, in which case an individual project performance bond may only be required for the construction of telecommunications facilities in public rights-of-way under a permit to the extent that the provider’s reasonable estimate of restoration costs for that project and all other projects covered by the blanket bond exceeds the amount of the blanket bond. A bond shall not be required where the unit of government determines it is not necessary to secure restoration considering, without limitation, the amount of restoration for the project, or the telecommunications provider’s ability to cover any claims without the need for security in the form of a bond, including through the provision of self-insurance in a form acceptable to the unit of government.

(3) Except as provided in this subsection, a unit of government shall not require a performance bond or other security from a telecommunications provider in connection with its access to and use of the public rights-of-way. The foregoing limitation shall not apply to the proof of insurance that may be required pursuant to Subsection 4(d).

(f) Indemnification.

(1) A unit of government shall have authority to include in a permit a provision requiring the telecommunications provider to defend, indemnify, and hold harmless the unit of government from liabilities, damages, costs, and expenses, including reasonable attorney’s fees, arising from injury to person or property proximately caused by the acts or omissions of the telecommunications provider in connection with its access to or use of the public rights-of-way.

(2) Any such provision shall: (a) require the unit of government to promptly notify the telecommunications provider of any claims, demands, or actions ("Claims") covered by such provision; (b) provide the telecommunications provider with the right to defend and compromise such claims, and require the unit of government to cooperate in the defense of such Claims; and (c) not apply to Claims arising from the negligence, willful or other acts of the unit of government, its employees or agents, except to the extent such Claims arise from the joint negligence of the telecommunications provider and unit of government, in which case, the amount of the Claims for which the unit of government shall be entitled to indemnification shall be limited to that portion attributable to the actions of the telecommunications provider.

(3) Except as provided in this subsection, a unit of government shall not require indemnification from a telecommunications provider in connection with its access to and use of the public rights-of-way.

Section 6. Action on Application; Review

(a) If the unit of government has not acted upon an application for a permit under this Section within thirty (30) days of the date of such application, the application shall be deemed granted. If the local unit of government has determined that the reasonable estimate of restoration costs for that project and all other projects covered by the blanket bond exceeds the amount of the blanket bond, a bond shall not be required, in which case, the amount of the claims for which the unit of government shall be entitled to indemnification shall be limited to that portion attributable to the actions of the telecommunications provider.

(b) Upon petition of any telecommunications provider that an existing arrangement does not comply with this Section, the unit of government shall reform the existing arrangement to comply with this Section.

(c) In an action by a telecommunications provider against the unit of government for a violation of this Section, the prevailing party may recover from the other court costs and reasonable attorney’s fees at trial and on appeal.

Section 7. Severability

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Act, which are to be given effect without the invalid provision or application, and to this end the provisions of this Act are deemed severable.

Section 8. Effective Date

This bill will become effective upon enactment.
