

House Engrossed
electric cooperatives; broadband service; fees

State of Arizona
House of Representatives
Fifty-fifth Legislature
First Regular Session
2021

CHAPTER 3
HOUSE BILL 2036

AN ACT

AMENDING SECTION 10-2085, ARIZONA REVISED STATUTES; RELATING TO ELECTRIC
COOPERATIVES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 10-2085, Arizona Revised Statutes, is amended to
3 read:

4 10-2085. Expanded use for broadband service; just
5 compensation; notice; fees; definitions

6 A. For the purposes of providing broadband service, if a
7 cooperative, directly or through its affiliate, expands the use of an
8 existing easement or other property right that is owned, held or used by
9 the cooperative to provide electricity or other services and the expanded
10 use reduces the fair market value of the property over which the easement
11 or other property right runs, the property owner is entitled to just
12 compensation from the cooperative.

13 B. The property owner must commence an action in the superior court
14 for just compensation based on diminution in value not later than eighteen
15 months after the date that the cooperative provides notice to the property
16 owner of the expanded use for broadband service. If an action is not
17 commenced within this time, the expanded use is deemed fully vested in the
18 cooperative and its affiliate without the need to pay just compensation
19 and the expanded use runs with the land.

20 C. Notice under subsection B of this section is effective if sent
21 by first class mail to the last known address of the property owner, by a
22 printed insertion in the property owner's electric bill or by other
23 commonly used publication or communication channels employed by the
24 cooperative.

25 D. In an action for just compensation based on a claim of expanded
26 use for broadband service all of the following apply:

27 1. The court or jury shall ascertain and assess the diminution in
28 value of the property based on the difference between the fair market
29 value of the entire parcel immediately before the expanded use and the
30 fair market value of the entire parcel immediately after the expanded use.

31 2. Evidence of revenues or profits derived from or the rental value
32 of an assembled communications corridor ~~are~~ IS not admissible in
33 determining fair market value.

34 3. On payment of just compensation, the expanded use for broadband
35 service is deemed fully vested in the cooperative and its affiliate and
36 the expanded use ~~shall run~~ RUNS with the land.

37 E. A class action may not be maintained against a cooperative or
38 its affiliate in any action for just compensation based on a claim of
39 expanded use for broadband service.

40 F. Actions for just compensation as described in this section
41 include trespass, inverse condemnation and other similar causes of action.

42 G. This section does not prohibit a cooperative or its affiliate
43 from reaching an agreement with a property owner to waive a claim for just
44 compensation related to expanded use for broadband service or from

1 acquiring the right to use the property for broadband service by other
2 lawful means.

3 H. If excavation is required to install fiber-optic cable or other
4 underground facilities to provide broadband service, the cooperative or
5 its affiliate shall provide written notice to the property owner of the
6 expanded use for broadband service before excavation. The cooperative or
7 its affiliate shall send the notice by first class mail to the last known
8 address of the property owner, by a printed insertion in the property
9 owner's electric bill or by other commonly used publication or
10 communication channels employed by the cooperative or its affiliate. A
11 notice sent to a property owner entitled to notice under this subsection
12 must include all of the following:

13 1. The name and mailing address of the cooperative or its
14 affiliate.

15 2. The mailing address, telephone number and email address for a
16 representative of the cooperative or its affiliate.

17 3. A summary statement describing the activities to be conducted
18 during the excavation.

19 4. The approximate dates when the excavation will start and end.

20 I. The notice prescribed in subsection H of this section is not
21 required before a cooperative's or its affiliate's use of an easement or
22 other property right that includes an authorization for excavation for
23 purposes of providing broadband service. Failure to provide the notice
24 prescribed in subsection H of this section:

25 1. Prohibits the cooperative or its affiliate from proceeding with
26 an excavation until the notice is provided.

27 2. Does not invalidate or prevent the cooperative or its affiliate
28 from expanding the use of the easement or property right as otherwise
29 described in this section.

30 J. ANY POLE ATTACHMENT AGREEMENT BETWEEN A COOPERATIVE AND AN
31 AFFILIATE FOR BROADBAND SERVICE PURSUANT TO SECTION 10-2057, SUBSECTION A,
32 PARAGRAPH 17 THAT INCLUDES ATTACHMENT TO THE COOPERATIVE'S POLES SHALL
33 SPECIFICALLY REQUIRE THE POLE ATTACHMENT FEES THAT ARE CHARGED TO ANY
34 UNAFFILIATED VIDEO SERVICE PROVIDER OR ANY UNAFFILIATED TELECOMMUNICATIONS
35 PROVIDER TO BE EQUAL TO THE POLE ATTACHMENT FEES CHARGED TO THE AFFILIATE
36 WHERE THE AFFILIATE AND VIDEO SERVICE PROVIDER OR TELECOMMUNICATIONS
37 PROVIDER ARE JOINTLY ATTACHED TO THE SAME POLE.

38 K. FOR THE PURPOSES OF THIS SECTION:

39 1. "TELECOMMUNICATIONS PROVIDER" HAS THE SAME MEANING PRESCRIBED IN
40 SECTION 9-1401 OR 11-1901.

41 2. "VIDEO SERVICE PROVIDER" HAS THE SAME MEANING PRESCRIBED IN
42 SECTION 9-1401 OR 11-1901.

H.B. 2036

APPROVED BY THE GOVERNOR FEBRUARY 5, 2021.

FILED IN THE OFFICE OF THE SECRETARY OF STATE FEBRUARY 5, 2021.