

Senate Engrossed House Bill

FILED

**MICHELE REAGAN
SECRETARY OF STATE**

State of Arizona
House of Representatives
Fifty-second Legislature
Second Regular Session
2016

CHAPTER 260

HOUSE BILL 2497

AN ACT

AMENDING SECTION 9-506, ARIZONA REVISED STATUTES; AMENDING TITLE 9, CHAPTER 5, ARTICLE 7, ARIZONA REVISED STATUTES, BY ADDING SECTION 9-584; RELATING TO PUBLIC UTILITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 9-506, Arizona Revised Statutes, is amended to
3 read:

4 9-506. Authority to issue license; limitations; permits for
5 Wi-Fi radio equipment; definitions

6 A. For the purpose of authorizing and regulating the construction,
7 operation and maintenance of cable television systems, the licensing
8 authority of a city, including a charter city, or town for an incorporated
9 area, or the licensing authority of the county for unincorporated areas,
10 either individually or jointly by intergovernmental contract, may issue a
11 license to any person to use public streets, roads and alleys and shall
12 impose conditions, restrictions and limitations ~~upon~~ ON the use of public
13 streets, roads and alleys and ~~upon~~ ON the construction, operation and
14 maintenance of cable television systems.

15 B. Subject to the limitations of this section, a licensing authority
16 may adopt resolutions or ordinances implementing and controlling the license
17 or joint license, issue a license containing other terms and conditions and
18 impose a license fee on gross revenues. In addition to the limitations of
19 this section, the license is subject to the limits established by the
20 communications act of 1934, as amended (47 United States Code sections 151
21 through 615b) and the federal communications commission.

22 C. Other than the license fee on gross revenues authorized by this
23 article and transaction privilege taxes as provided in this subsection, a
24 licensing authority may not levy a tax, rent, fee or charge, however
25 denominated, on a cable operator for the use of the public streets, roads or
26 alleys to provide cable service or levy a tax, fee or charge on the privilege
27 of engaging in the business of providing cable service in the area of
28 jurisdiction. Taxes, rents, fees and charges include all:

29 (i) Access channel support except for in-kind services or payments as
30 provided in subsection D of this section. ~~—~~

31 (ii) Rental, application, construction, permit, inspection,
32 inconvenience and other fees and charges related to a cable operator's use of
33 the public streets, roads and alleys, INCLUDING THE USE AUTHORIZED BY
34 SUBSECTION I OF THIS SECTION. THIS SUBSECTION DOES NOT PROHIBIT A LICENSING
35 AUTHORITY FROM LEVYING FEES AND CHARGES FOR MICROCELL EQUIPMENT ON A CABLE
36 OPERATOR PURSUANT TO SECTION 9-584 WITHOUT AN OFFSET FOR LICENSE FEES. In
37 addition, the following apply:

38 1. Any transaction privilege taxes otherwise authorized by law to be
39 levied on the business of providing cable service or in relation to use of
40 the public streets, roads or alleys to provide cable service may be levied on
41 a cable operator if the taxes are levied only on gross revenues and the rate
42 of the taxes is subject to paragraph 3 of this subsection. This subsection
43 does not authorize the imposition of transaction privilege taxes on
44 interstate telecommunications services.

1 2. The license fee and any transaction privilege taxes levied on gross
2 revenues constitute a franchise fee within the meaning of 47 United States
3 Code section 542(g)(1).

4 3. Under no circumstances may the total of the rates of the license
5 fee and of any transaction privilege taxes on gross revenues levied or
6 assessed by a licensing authority for the privilege of providing cable
7 service and related use of the public streets, roads or alleys to provide
8 cable service exceed a rate of five ~~per cent~~ PERCENT, except during the
9 transition period for certain licenses as provided in subsection H of this
10 section.

11 4. A cable operator shall pass on to subscribers any reduction in the
12 amount of fees, taxes or other charges paid by a cable operator and itemized
13 to subscribers that results from the implementation of the amendment to this
14 section effective on September 21, 2006.

15 D. A licensing authority may not require a cable operator to provide
16 in-kind services, make in-kind payments or pay a fee in addition to the
17 monetary license fee levied or assessed as provided in this section as part
18 of or as a condition of issuing a license to provide cable service, except
19 that:

20 1. A licensing authority may require a cable operator to provide
21 channel capacity to transmit programming over which the cable operator
22 exercises no editorial control except as authorized by 47 United States Code
23 section 531(e). The channel capacity shall be limited to not more than two
24 channels of public, educational or governmental access programming in the
25 basic service tier of the cable television system and not more than two
26 channels of noncommercial governmental programming, at least one of which may
27 be programmed by the federal government, in the digital programming tier of
28 the cable television system. If channel capacity is required, the
29 programming shall be specified in the license and the cable operator may
30 require that the channels regularly display an unobtrusive logo or other
31 suitable identifier of the cable operator as set forth in the license.

32 2. A licensing authority may require a cable operator to incur costs
33 and expenses to provide, maintain and operate facilities and equipment of the
34 cable television system, including facilities and equipment for signal
35 carriage, processing, reformatting and interconnection:

36 (a) To connect the cable television system, as it may be relocated
37 from time to time, to transmit programming to and from existing locations of
38 public, educational or governmental access facilities and to allow monitoring
39 of access programming at the facilities.

40 (b) To transmit public, educational and governmental access channels
41 to subscribers with the same prevailing quality, functionality and
42 identification as other channels.

43 3. A licensing authority may require a cable operator to provide the
44 basic service tier of cable service at no monthly service charge to offices
45 and facilities of the licensing authority.

1 4. The value of any channel capacity provided pursuant to paragraph 1
2 of this subsection, the costs and expenses incurred pursuant to paragraph 2
3 of this subsection and the value of basic service provided pursuant to
4 paragraph 3 of this subsection may not be offset against the license fee
5 levied or assessed under this section.

6 E. This section does not prohibit a cable operator from agreeing to
7 provide in-kind services or make in-kind payments in the area of jurisdiction
8 that are prohibited by subsection D of this section if the agreement with the
9 licensing authority is not part of, or entered into as a condition of being
10 issued, a new, renewed or amended license to provide cable service. An
11 agreement that requires in-kind cable service or payments shall set forth the
12 total annual fair market value of the in-kind cable service and payments,
13 which shall be less than or equal to and offset against the license fee
14 levied or assessed annually pursuant to this section. The license shall
15 authorize the cable operator to retain license fees and taxes collected from
16 its subscribers in the amount of this offset. In-kind cable services and
17 payments include any channel capacity and all capital costs and charges for
18 or in support of the use of any channel capacity that the cable operator
19 agrees to provide under this subsection.

20 F. Notwithstanding subsection C of this section, a licensing authority
21 may require that a cable operator:

22 1. Bear reasonable costs that are associated with damage caused to
23 public streets, roads and alleys by construction, maintenance and operation
24 of its facilities in the public streets, roads and alleys and that are
25 imposed on a competitively neutral and nondiscriminatory basis in relation to
26 costs borne by telecommunications corporations under section 9-582,
27 subsection C.

28 2. Pay fines, fees, charges or damages for breach of the terms and
29 conditions of the license.

30 G. This section does not affect the authority of a licensing authority
31 to manage the public streets, roads and alleys within its boundaries or to
32 exercise its police powers.

33 H. A license that is in effect on September 21, 2006, including one
34 that is later renewed or extended for a term that begins before July 1, 2007,
35 is enforceable in accordance with its terms and conditions as of July 1, 2007
36 and is not subject to the provisions of the amendment to this section
37 effective on September 21, 2006. If a license that is in effect on September
38 21, 2006 is later extended or renewed for a term that begins after June 30,
39 2007, the extended or renewed license is subject to the provisions of the
40 amendment to this section effective on September 21, 2006 and of the
41 amendment to this section, EFFECTIVE ON SEPTEMBER 19, 2007, effective on the
42 first day of the renewal or extension term, unless the term begins before
43 January 1, 2008, in which case the limitation in subsection C, paragraph 3 of
44 this section on the rates of the license fee and of any transaction privilege
45 taxes on gross revenues is:

1 1. Five ~~per cent~~ PERCENT, if the gross effective rate is five ~~per cent~~
2 PERCENT or less.

3 2. If the gross effective rate is more than five ~~per cent~~ PERCENT,
4 five ~~per cent~~ PERCENT plus the following percentage:

5 (a) In the first year of the extension or renewal term, the gross
6 effective rate minus five ~~per cent~~ PERCENT, multiplied by two-thirds.

7 (b) In the second year of the term, the gross effective rate minus
8 five ~~per cent~~ PERCENT, multiplied by one-third.

9 (c) In the third year of the term, and thereafter, zero ~~per cent~~
10 PERCENT.

11 I. ON APPLICATION A LICENSING AUTHORITY SHALL ISSUE TO A CABLE
12 OPERATOR A PERMIT TO ATTACH ALLOWED WI-FI RADIO EQUIPMENT TO THE CABLE
13 TELEVISION SYSTEM IN PUBLIC STREETS, ROADS AND ALLEYS IN THE AREA OF
14 JURISDICTION. THE PERMITS SHALL ALLOW INSTALLATION, OPERATION AND
15 MAINTENANCE OF THE ALLOWED WI-FI RADIO EQUIPMENT. A LICENSING AUTHORITY MAY
16 REQUIRE THAT ALL OF THE ALLOWED WI-FI RADIO EQUIPMENT AT A SINGLE LOCATION
17 FIT WITHIN A FIFTEEN-INCH CUBE AND BE CONTAINED ENTIRELY WITHIN A
18 GROUND-MOUNTED PEDESTAL OTHERWISE ALLOWED BY THE LICENSE OR BE CONNECTED
19 DIRECTLY TO AND MOUNTED AT THE SAME HEIGHT AS ONE OF THE CABLE OPERATOR'S
20 AERIAL HORIZONTAL CONDUCTORS OTHERWISE ALLOWED BY THE LICENSE.

21 J. SUBSECTION I OF THIS SECTION DOES NOT:

22 1. AFFECT ANY AUTHORITY OF A POLITICAL SUBDIVISION, INCLUDING AN
23 AGRICULTURAL IMPROVEMENT DISTRICT OR ANY OTHER SPECIAL TAXING DISTRICT, THE
24 LICENSING AUTHORITY OR ANY OTHER PERSON CONTROLLING UTILITY POLES IN THE
25 PUBLIC STREETS, ROADS AND ALLEYS TO DENY, LIMIT, RESTRICT OR DETERMINE THE
26 TERMS AND CONDITIONS FOR THE USE OF OR ATTACHMENT TO THE UTILITY POLES OR
27 ATTACHMENTS TO OTHER POLES OF THE POLITICAL SUBDIVISION, LICENSING AUTHORITY
28 OR OTHER PERSON BY A CABLE OPERATOR.

29 2. PROHIBIT A LICENSING AUTHORITY FROM IMPOSING COMPETITIVELY NEUTRAL
30 AND NONDISCRIMINATORY REQUIREMENTS FOR A CABLE OPERATOR TO UNDERGROUND AERIAL
31 FACILITIES TO WHICH ALLOWED WI-FI EQUIPMENT IS ATTACHED.

32 3. PROHIBIT THE IMPOSITION OF A TAX, RENT, FEE OR CHARGE ON REVENUE
33 FROM SERVICES PROVIDED THROUGH ALLOWED WI-FI RADIO EQUIPMENT.

34 4. AFFECT THE AUTHORITY OF A LICENSING AUTHORITY TO MANAGE THE PUBLIC
35 STREETS, ROADS AND ALLEY WITHIN ITS BOUNDARIES OR TO EXERCISE ITS POLICE
36 POWERS INCLUDING REVIEW AND APPROVAL OF AN APPLICATION BEFORE ISSUING A
37 PERMIT.

38 ~~I.~~ K. For THE purposes of ~~subsection H~~ of this section: —

39 1. "ALLOWED WI-FI RADIO EQUIPMENT" MEANS RADIO EQUIPMENT THAT USES
40 ONLY UNLICENSED RADIO SPECTRUM AND THAT ENABLES WIRELESS COMMUNICATION WITH A
41 COMMUNICATIONS NETWORK FOR UNLICENSED SERVICES SUCH AS WI-FI SERVICE.

42 2. "Gross effective rate" means one hundred ~~per cent~~ PERCENT
43 multiplied by the fraction in which the numerator is the sum of all taxes,
44 fees and charges of the licensing authority that the cable operator itemized
45 to subscribers and paid to the licensing authority under the license for the

1 twelve calendar months immediately preceding September 21, 2006 and the
2 denominator is the cable operator's gross revenues for that period in the
3 area of jurisdiction.

4 Sec. 2. Title 9, chapter 5, article 7, Arizona Revised Statutes, is
5 amended by adding section 9-584, to read:

6 9-584. Microcell equipment in public highways; permits; fees;
7 limitations; definitions

8 A. A POLITICAL SUBDIVISION SHALL ALLOW THE FOLLOWING PERSONS TO
9 INSTALL, OPERATE AND MAINTAIN MICROCELL EQUIPMENT IN THE PUBLIC HIGHWAYS
10 WITHIN THE POLITICAL SUBDIVISION:

11 1. A TELECOMMUNICATIONS CORPORATION WITHIN THE LICENSED AREA OF A
12 LICENSE ISSUED BY THE POLITICAL SUBDIVISION UNDER THIS ARTICLE.

13 2. A TELECOMMUNICATIONS CORPORATION DESCRIBED IN SECTION 9-582,
14 SUBSECTION E.

15 3. A CABLE OPERATOR IN THE AREA OF JURISDICTION LICENSED BY THE
16 POLITICAL SUBDIVISION UNDER SECTION 9-506.

17 B. ON APPLICATION A POLITICAL SUBDIVISION SHALL ISSUE PERMITS FOR THE
18 INSTALLATION, OPERATION AND MAINTENANCE OF MICROCELL EQUIPMENT IN THE PUBLIC
19 HIGHWAYS WITHIN THE POLITICAL SUBDIVISION ON A COMPETITIVELY NEUTRAL AND
20 NONDISCRIMINATORY BASIS TO ALL PERSONS SPECIFIED IN SUBSECTION A OF THIS
21 SECTION.

22 C. ALL APPLICATION FEES, PERMIT FEES AND CHARGES LEVIED BY A POLITICAL
23 SUBDIVISION FOR APPLICATIONS OR PERMITS SHALL BE LEVIED ON A COMPETITIVELY
24 NEUTRAL AND NONDISCRIMINATORY BASIS AND DIRECTLY RELATED TO THE COSTS
25 INCURRED BY THE POLITICAL SUBDIVISION IN PROVIDING SERVICES RELATING TO THE
26 GRANTING OR ADMINISTRATION OF APPLICATIONS OR PERMITS. THESE FEES AND
27 CHARGES ALSO SHALL BE REASONABLY RELATED IN TIME TO THE OCCURRENCE OF THE
28 COSTS.

29 D. A POLITICAL SUBDIVISION MAY NOT CHARGE A RECURRING FEE, RENT OR
30 OTHER CHARGE FOR USE OF AERIAL STRAND-MOUNTED MICROCELL EQUIPMENT IN PUBLIC
31 HIGHWAYS WITHIN THE POLITICAL SUBDIVISION IF THE POLITICAL SUBDIVISION LEVIES
32 A RENT, FEE OR CHARGE ON A PERSON IDENTIFIED IN SUBSECTION A OF THIS SECTION
33 FOR THE USE OF THE PUBLIC HIGHWAYS TO PROVIDE A SERVICE. THIS SUBSECTION
34 DOES NOT PROHIBIT A POLITICAL SUBDIVISION FROM CHARGING A COMPETITIVELY
35 NEUTRAL AND NONDISCRIMINATORY RENT, FEE OR CHARGE FOR THE USE OF UTILITY
36 POLES OR OTHER POLES OF THE POLITICAL SUBDIVISION. ONLY A QUALIFIED SERVICE
37 PROVIDER MAY USE MICROCELL EQUIPMENT TO PROVIDE COMMERCIAL MOBILE SERVICES.

38 E. EXCEPT AS THE POLITICAL SUBDIVISION AGREES IN THE POLITICAL
39 SUBDIVISION'S SOLE DISCRETION, AT EACH SITE MICROCELL EQUIPMENT IS LIMITED
40 TO:

41 1. NOT MORE THAN TWO STRAND-MOUNTED ANTENNAE AND RADIO PAIRS THAT ARE
42 OWNED BY A PERSON SPECIFIED IN SUBSECTION A OF THIS SECTION OR A QUALIFIED
43 SERVICE PROVIDER AND THAT ARE USED TO PROVIDE COMMERCIAL MOBILE SERVICE.

1 2. RELATED DEVICES THAT ARE OWNED BY A PERSON SPECIFIED IN SUBSECTION
2 A OF THIS SECTION AND THAT ARE MOUNTED ON STRAND BETWEEN UTILITY POLES,
3 INCLUDING POWER SUPPLIES, HOUSINGS, CABLES AND SIMILAR SUPPORTING FURNISHINGS
4 AND IMPROVEMENTS.

5 F. THIS SECTION DOES NOT:

6 1. AFFECT ANY AUTHORITY OF A POLITICAL SUBDIVISION, AN AGRICULTURAL
7 IMPROVEMENT DISTRICT OR ANY OTHER SPECIAL TAXING DISTRICT, OR ANY OTHER
8 PERSON CONTROLLING UTILITY POLES IN THE PUBLIC HIGHWAYS TO DENY, LIMIT,
9 RESTRICT OR DETERMINE THE TERMS AND CONDITIONS FOR USE OF OR ATTACHMENT TO
10 THE UTILITY POLES OR ATTACHMENTS TO OTHER POLES OF THE POLITICAL SUBDIVISION,
11 DISTRICT OR OTHER PERSON BY A PERSON SPECIFIED IN SUBSECTION A OF THIS
12 SECTION.

13 2. PROHIBIT A POLITICAL SUBDIVISION FROM IMPOSING COMPETITIVELY
14 NEUTRAL AND NONDISCRIMINATORY REQUIREMENTS FOR A PERSON IDENTIFIED IN
15 SUBSECTION A OF THIS SECTION TO UNDERGROUND AERIAL FACILITIES TO WHICH
16 MICROCELL EQUIPMENT IS ATTACHED.

17 3. PROHIBIT A POLITICAL SUBDIVISION FROM IMPOSING A TAX, RENT, FEE OR
18 CHARGE ON REVENUE FROM SERVICES PROVIDED THROUGH MICROCELL EQUIPMENT.

19 4. AFFECT THE AUTHORITY OF A POLITICAL SUBDIVISION TO MANAGE THE
20 PUBLIC HIGHWAYS WITHIN THE POLITICAL SUBDIVISION'S BOUNDARIES OR TO EXERCISE
21 THE POLITICAL SUBDIVISION'S POLICE POWERS, INCLUDING REVIEW AND APPROVAL OF
22 AN APPLICATION BEFORE ISSUING A PERMIT.

23 G. FOR THE PURPOSES OF THIS SECTION:

24 1. "MICROCELL EQUIPMENT" MEANS DEVICES THAT ARE CONNECTED TO THE
25 AERIAL FACILITIES OF A PERSON SPECIFIED IN SUBSECTION A OF THIS SECTION AND
26 THAT ARE USED SOLELY FOR TRANSMITTING, PROCESSING AND RECEIVING VOICE AND
27 DATA WIRELESS TELECOMMUNICATIONS SERVICES. MICROCELL EQUIPMENT DOES NOT
28 INCLUDE ANY GROUND-BASED EQUIPMENT.

29 2. POLITICAL SUBDIVISION DOES NOT INCLUDE AN AGRICULTURAL IMPROVEMENT
30 DISTRICT OR OTHER SPECIAL TAXING DISTRICT THAT CONTROLS UTILITY POLES OR AN
31 IRRIGATION DISTRICT.

32 3. "QUALIFIED SERVICE PROVIDER" MEANS A PERSON THAT HAS ALL APPLICABLE
33 AUTHORIZATIONS REQUIRED TO PROVIDE COMMERCIAL MOBILE SERVICE USING MICROCELL
34 EQUIPMENT.

35 4. "UTILITY POLE" MEANS A POLE OR SIMILAR STRUCTURE AND ATTACHED
36 APPURTENANCES INCLUDING STRAND THAT IS DESIGNED FOR TELECOMMUNICATIONS,
37 CABLE, DATA OR ELECTRIC FUNCTIONS.

38 Sec. 3. Legislative findings

39 Wireless services bring important daily benefits to the residents of
40 this state, including sending and receiving constitutionally protected speech
41 and other communications. Varying access to the public highways, streets,
42 roads and alleys across multiple subdivisions of this state can impede the
43 use of these services by, and their delivery to, the residents of this state.
44 Therefore, the legislature finds, determines and declares that this act is
45 necessary as a matter of statewide concern to ensure that cities, towns and

1 counties, including charter cities, compatibly and effectively authorize,
2 administer and manage the use of the public highways, streets, roads and
3 alleys for the provision of certain licensed and unlicensed wireless
4 communication services. It is the public policy of this state that this act
5 be enforced to the fullest extent permitted by federal law.

6 Sec. 4. Retroactivity; applicability

7 A. Section 9-506, subsection C, Arizona Revised Statutes, as amended
8 by this act, prohibiting a licensing authority from levying a tax, rent, fee
9 or charge for certain use of the public streets, roads and alleys for allowed
10 Wi-Fi radio equipment applies retroactively to supersede any requirements and
11 agreements to pay such tax, rent, fee or charge that were adopted or made
12 took effect on or before the effective date of this act, except that any
13 requirement to pay application, construction, permit, inspection and other
14 fees and charges with respect to allowed Wi-Fi radio equipment that the cable
15 operator agreed to on or before December 31, 2015, is not subject to the
16 amendment and remains enforceable in accordance with its terms and conditions
17 until the license of the cable operator is renewed or extended for a term
18 that begins after the effective date of this act. On the first day of the
19 renewal, or extension, term of the cable license, any requirement to pay such
20 charges that the cable operator agreed to becomes subject to the amendment.

21 B. Section 9-506, subsection I, Arizona Revised Statutes, as added by
22 this act, allowing a licensed cable operator to attach to the cable
23 television system and operate and maintain allowed Wi-Fi radio equipment in
24 public streets, roads and alleys applies to all licenses issued before the
25 effective date of this act.

26 C. Section 9-584, Arizona Revised Statutes, as added by this act,
27 allowing certain persons to install, operate and maintain microcell equipment
28 in the public highways within a political subdivision applies to all persons
29 specified in this act, including those with telecommunications or cable
30 licenses or other authorizations that took effect or were issued before the
31 effective date of this act.

APPROVED BY THE GOVERNOR MAY 17, 2016.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 17, 2016.

Passed the House March 1, 20 16

Passed the Senate March 31, 20 16

by the following vote: 37 Ayes,

by the following vote: 30 Ayes,

22 Nays, 1 Not Voting

0 Nays, 0 Not Voting

[Signature]
Speaker of the House
 Pro Tempore

[Signature]
President of the Senate

[Signature]
Chief Clerk of the House

[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

_____ day of _____, 20____

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this _____ day of _____, 20____

at _____ o'clock _____ M.

Secretary of State

H.B. 2497

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

_____ May 6, 2016,

by the following vote: 54 Ayes,

0 Nays, 6 Not Voting

Speaker of the House

Jim Drake
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

6 day of May, 2016,

at 8:19 o'clock P. M.

Valerie Hanna
Secretary to the Governor

Approved this 17th day of

May, 2016,

at 10:50 o'clock A. M.

Jay D. Ivey
Governor of Arizona

H.B. 2497

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State
this 17th day of May, 2016,

at 11:40 o'clock A M.

Michelle Reagan
Secretary of State