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# A BILL FOR AN ACT

RELATING TO TELECOMMUNICATIONS FACILITIES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Chapter 206N, Hawaii Revised Statutes is  
2 amended by adding a new part to be appropriately designated and  
3 to read as follows:

4           "PART           . TELECOMMUNICATION FACILITY INSTALLATION

5           §206N-A Definitions. As used in this part, unless the  
6 context requires otherwise:

7           "Broadband service" means the provision of access and  
8 transport to the internet, computer processing, information  
9 storage or protocol conversion at a rate of at least one megabit  
10 per second in either the upstream or downstream direction, as  
11 established by the Federal Communications Commission.

12           "Department" means the department of transportation.

13           "Director" means the director of transportation.

14           "Longitudinal access" means access to or use of any part of  
15 a right-of-way of a highway that extends generally parallel to  
16 the right-of-way for a total of thirty or more linear meters.

17           "Provider" means an entity that:



- 1           (1) Provides for the sale or resale of wholesale or retail  
2           broadband services in the State and that:
- 3           (A) Is recognized as an eligible telecommunications  
4           carrier by the public utilities commission; or
- 5           (B) Meets the Federal Communications Commission and  
6           industry carrier class service guidelines; or
- 7           (2) Is a political subdivision that has statutory  
8           authority to provide communications services.

9 "Provider" may also include a video service provider.

10 "Telecommunication facility" means any cable, line, fiber,  
11 wire, conduit, innerduct, access manhole, handhole, tower, hut,  
12 pedestal, pole, box, transmitting equipment, receiving  
13 equipment, or power equipment or any other equipment, system, or  
14 device that is used to transmit, receive, produce, or distribute  
15 by wireless, wireline, electronic, or optical signal for  
16 communication purposes.

17           §206N-B Telecommunication facility installation; highway  
18 construction projects; expanded use; action in court; just  
19 compensation; excavation; notice. (a) The director, or a  
20 provider with permission from the department, may install  
21 telecommunication facilities pursuant to this part.



1           (b) The director may lease a telecommunication facility to  
2 providers pursuant to this part and coordinate with providers  
3 regarding planning or relocating a telecommunication facility  
4 and any related provider telecommunication facilities within the  
5 right-of-way at the provider's expense. The director may limit  
6 provider access to any broadband telecommunication facilities  
7 within the right-of-way for initial installation and infrequent  
8 access for maintenance purposes and may take other actions  
9 necessary to maintain highway safety.

10           (c) The director, or a provider with permission from the  
11 department, may install a telecommunication facility without  
12 regard to the timing of a related existing road construction  
13 project.

14           (d) For the purposes of installing and operating a  
15 telecommunication facility, if the department, directly or  
16 through a provider, expands the use of an existing easement or  
17 other property right that is owned, held, or used by the  
18 department for transportation purposes and the expanded use  
19 reduces the fair market value of the property over which the  
20 easement or other property right runs, the property owner is  
21 entitled to just compensation from the department or provider.



1           (e) No later than eighteen months after the date the  
2 department provides notice to a property owner of the expanded  
3 use, the property owner seeking just compensation based on the  
4 decrease in value shall commence an action in the circuit court  
5 of the circuit in which the property in question is located.

6           (f) Notice under subsection (e) is provided if sent by  
7 first class mail to the last known address of the property  
8 owner.

9           (g) In an action for just compensation based on a claim of  
10 expanded use for installation of a telecommunication facility:

11           (1) The court or jury shall ascertain and assess the  
12 decrease in value of the property based on the  
13 difference between the fair market value of the entire  
14 parcel immediately before the expanded use and the  
15 fair market value of the entire parcel immediately  
16 after the expanded use;

17           (2) Evidence of revenues or profits derived from or the  
18 rental value of an assembled communications corridor  
19 shall not be admissible in determining fair market  
20 value; and



1           (3) On payment of just compensation, the expanded use is  
2           deemed fully vested in the department and the easement  
3           including the expanded use shall run with the land.

4           (h) A class action may not be maintained against the  
5           department or provider in any action for just compensation based  
6           on a claim of expanded use for the installation of a  
7           telecommunication facility.

8           (i) Actions for just compensation as described in this  
9           section include trespass, inverse condemnation, and other  
10          similar causes of action.

11          (j) This section shall not prohibit the department or a  
12          provider from reaching an agreement with a property owner to  
13          waive a claim for just compensation related to expanded use for  
14          the installation of a telecommunication facility or from  
15          acquiring the right to use the property by other lawful means.

16          (k) If excavation is required to install fiber optic cable  
17          or other underground telecommunication facilities within an  
18          existing easement or other property right that is owned, held or  
19          used by the department for transportation purposes, a provider  
20          with consent of the department shall provide written notice to  
21          the property owner of the expanded use for installation of the



1 telecommunication facility before excavation may begin. The  
2 provider shall send the notice, by first class mail to the last  
3 known address of the property owner. A notice sent to the  
4 property owner entitled to notice under this subsection must  
5 include the following:

- 6 (1) The name and mailing address of the provider;
- 7 (2) The mailing address, telephone number and email  
8 address of a representative of the provider;
- 9 (3) A summary statement describing the activities to be  
10 conducted during the excavation; and
- 11 (4) The approximate dates when the excavation will start  
12 and end.

13 (1) The notice prescribed in subsection (k) is not  
14 required before the provider may use an easement or other  
15 property right that includes an authorization for excavation for  
16 the purposes of installing a telecommunication facility. The  
17 failure to provide the notice prescribed in subsection (k):

- 18 (1) Prohibits the provider from proceeding with an  
19 excavation until the notice is provided; and



1           (2) Shall not invalidate or prevent the department from  
2           expanding the use of the easement or property right as  
3           otherwise described in this section.

4           (m) Compensation provided by this section shall be paid  
5 from the smart highway corridor special fund established by  
6 section 206N-G.

7           **§206N-C Management of state-owned telecommunication**  
8 **facilities.** The department may enter into an agreement with a  
9 public or private entity for the purpose of using, managing, or  
10 operating state-owned telecommunication facilities and  
11 coordinating activities in this State relating to planning,  
12 mapping, and procuring broadband service.

13           **§206N-D Longitudinal telecommunication access in the**  
14 **highway system; agreements; restrictions; rulemaking.** (a)  
15 Except as provided in subsection (e), the department may allow a  
16 provider longitudinal access to the right-of-way of a highway  
17 for the installation, operation, and maintenance of a  
18 telecommunication facility.

19           (b) The department shall enter into an agreement with a  
20 provider and issue a permit before granting the provider any  
21 longitudinal access.



1           (c) Except as specifically provided by an agreement  
2 pursuant to subsection (b), a property interest in a right-of-  
3 way may not be granted under this section.

4           (d) An agreement entered by the department under this  
5 section shall:

6           (1) Specify the terms and conditions for renegotiating the  
7 agreement;

8           (2) Specify maintenance responsibilities for each  
9 telecommunication facility;

10          (3) Be nonexclusive; and

11          (4) Be limited to a maximum term of thirty years.

12          (e) The department may not grant any longitudinal access  
13 that results in a significant compromise of the safe, efficient,  
14 and convenient use of the highway for the traveling public.

15          (f) The director shall adopt rules that:

16          (1) Govern the installation, operation, and maintenance of  
17 a telecommunication facility granted longitudinal  
18 access under this section;

19          (2) Specify the procedures for establishing an agreement  
20 for longitudinal access for a provider; and



- 1 (3) Provide for the relocation or removal of a
- 2 telecommunication facility for:
- 3 (A) Needed changes to a highway;
- 4 (B) Expiration of an agreement; or
- 5 (C) Breach of an agreement.

6 §206N-E Longitudinal telecommunication access to highway  
7 system right-of-way; compensation. (a) The department shall  
8 require compensation from a provider for longitudinal access to  
9 the right-of-way of a state highway. The compensation shall be:

- 10 (1) Fair and reasonable;
- 11 (2) Competitively neutral;
- 12 (3) Nondiscriminatory;
- 13 (4) Open to public inspection;
- 14 (5) Established to promote access by multiple providers;
- 15 (6) Established for zones of this State;
- 16 (7) Established to encourage the deployment of digital  
17 infrastructure within this State;
- 18 (8) A lump sum payment or annual installment, at the  
19 option of the provider; and
- 20 (9) Set pursuant to subsection (i).



1 (b) The compensation may be cash, in-kind compensation, or  
2 a combination thereof.

3 (c) In-kind compensation requires the agreement of both  
4 the provider and the department.

5 (d) The department shall determine the present value of  
6 any in-kind compensation based on the incremental cost to the  
7 provider.

8 (e) The value of in-kind compensation or a combination of  
9 cash and in-kind compensation shall be equal to or greater than  
10 the amount of cash compensation that would be charged if the  
11 compensation was cash only.

12 (f) The department shall provide for the proportionate  
13 sharing of costs among the department and providers for joint  
14 trenching or trench-sharing based on the amount of conduit  
15 innerduct space that is authorized in the agreement for the  
16 trench.

17 (g) If two or more providers are required to share a  
18 single trench, each provider in the trench shall share the cost  
19 and benefits of the trench pursuant to subsection (f) of this  
20 section on a fair, reasonable, competitively neutral, and  
21 nondiscriminatory basis.



1           (h) The department, by rule, shall establish a schedule of  
2 rates of compensation for any longitudinal access granted under  
3 this section.

4           (i) The department may not pay any cost of relocation of a  
5 private telecommunication facility granted longitudinal access  
6 to the right-of-way of a highway on the interstate system under  
7 this section.

8           (j) The department shall deposit the moneys collected  
9 pursuant to this section in the smart highway corridor special  
10 fund established by section 206N-G.

11           (k) Any telecommunications capacity acquired as in-kind  
12 compensation shall be used exclusively for the further  
13 development of telecommunications that serve state agencies and  
14 enhance connectivity for higher and public education and may not  
15 be sold or leased in competition with telecommunication or  
16 internet service providers.

17           (l) A person may not use compensation paid to the  
18 department pursuant to this section as evidence of the market or  
19 other value of the access for any other purpose, including  
20 condemnation proceedings, other litigation, the application of



1 rates of taxation, or the establishment of franchise fees  
2 relating to longitudinal access rights.

3 **§206N-F Use and access to state-owned conduit;**

4 **compensation.** (a) The department may offer a provider use of  
5 and access to its spare conduit and related facilities if the  
6 department does the following:

7 (1) Determines the spare conduit and related facilities  
8 are not needed for highway purposes;

9 (2) Receives fair compensation for the use of and access  
10 to the spare conduit and related facilities; and

11 (3) Offers the use and access in a competitively neutral  
12 and nondiscriminatory manner as to all similarly  
13 situated providers.

14 (b) The department shall establish rates of compensation  
15 for the use of and access to its spare conduit to ensure that  
16 the department receives fair compensation for the value of its  
17 underground installations of conduit and related facilities.

18 The compensation shall be fair and reasonable and charged in a  
19 competitively neutral and nondiscriminatory manner to all  
20 similarly situated providers.



1           (c) Any compensation pursuant to this section must be set  
2 forth in an agreement entered between the department and the  
3 provider.

4           (d) The department shall determine the annual compensation  
5 to be paid by each provider for the use of its conduit and  
6 related facilities based on the present value of the estimated,  
7 reasonable cost to the department of trenching to place conduit,  
8 fiber and other related facilities.

9           (e) The department may accept in-kind compensation for the  
10 use of and access to its spare conduit and related facilities in  
11 accordance with the valuation procedures prescribed in section  
12 206N-E.

13           (f) The department shall deposit the moneys collected  
14 pursuant to this section in the smart highway corridor special  
15 fund established by section 206N-G.

16           (g) Nothing in this section shall require the department  
17 to receive compensation from any budget unit of this State for  
18 use of and access to conduit and related facilities.

19           **§206N-G Smart highway corridor special fund.** (a) There  
20 is established in the state treasury the smart highway corridor  
21 special fund, into which shall be deposited:



- 1           (1) Appropriations by the legislature;
- 2           (2) Moneys received from the sales or leases of rights-of-
- 3           ways, telecommunication facilities, and
- 4           telecommunication services pursuant to sections 206N-E
- 5           and 206N-F; and
- 6           (3) Moneys received from providers to reimburse costs for
- 7           compensation claims pursuant to section 206N-B.
- 8           (b) The smart highway corridor special fund shall be
- 9           administered by the department and shall be used for the
- 10          following purposes:
- 11          (1) Maintenance, operation, and expansion of
- 12          telecommunication facilities and telecommunication
- 13          services within rights-of-way that are managed by the
- 14          department; and
- 15          (2) Payment of compensation pursuant to section 206N-B.
- 16          (c) All interest derived from the deposit and investment
- 17          of moneys in the smart highway corridor special fund shall be
- 18          credited to the fund. At the end of any fiscal year, all
- 19          unexpended and unencumbered moneys shall remain in the smart
- 20          highway corridor special fund and shall not be credited or
- 21          transferred to the general fund or any other funds.



1 (d) On notice from the department, the director of finance  
2 shall invest and divest the moneys in the smart highway corridor  
3 special fund as provided by section 36-21, and moneys earned  
4 from investment shall be credited to the fund."

5 SECTION 2. Chapter 264, Hawaii Revised Statutes, is  
6 amended by adding a new section to be appropriately designated  
7 and to read as follows:

8 "§264- Lease of areas above and below highways;  
9 exceptions. (a) The director may lease to any public agency,  
10 as defined in section 103D-1001, or to a private person or  
11 entity the use of areas above or below state highways, subject  
12 to reservations, restrictions, and conditions the director deems  
13 necessary to assure adequate protection of the safety and  
14 integrity of highway facilities and to secure the safety of  
15 motorists. Before entering the lease, the director shall:

16 (1) Determine that the proposed use by a lessee is not in  
17 conflict with the zoning regulations of the local  
18 government concerned; and

19 (2) Make a lease with a private person or entity only  
20 after competitive sealed bidding pursuant to 103D-302.



1        (b) The director may reject any or all bids or call for  
2 additional bids if, in the opinion of the board, the bids  
3 submitted are not in the best interest of this State. The  
4 director shall not accept a bid that does not yield at least a  
5 fair rental value for the property to the state highway fund.

6        (c) The department shall deposit the revenues derived from  
7 the leases in the state highway fund.

8        (d) The authority granted to the director by this section  
9 shall not include the right to lease public rights-of-way to  
10 public service corporations, and this section shall not affect  
11 any rights of public service corporations to use public rights-  
12 of-way or to obtain permits or easements associated with public  
13 uses of public rights-of-way.

14        (e) This section shall not apply to the use of highway  
15 rights-of-way for telecommunication facility installation  
16 pursuant to part A of chapter 206N."

17        SECTION 3. The department of transportation shall  
18 promulgate rules for the purposes of this Act, pursuant to  
19 chapter 91, within one year from the effective date of this Act.

20        SECTION 4. In codifying the new sections added by section  
21 1 of this Act, the revisor of statutes shall substitute



# S.B. NO. 2603

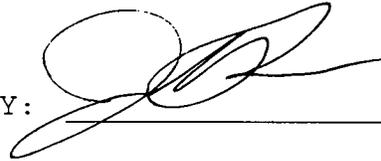
1 appropriate section numbers for the letters used in designating  
2 the new sections in this Act.

3 SECTION 5. New statutory material is underscored.

4 SECTION 6. This Act shall take effect on July 1, 2022.

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INTRODUCED BY:



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# S.B. NO. 2603

**Report Title:**

Telecommunications Facilities; Installation; Lease; Management; Highways; Longitudinal Access; Smart Highway Corridor Special Fund

**Description:**

Allows the Department of Transportation to install and lease telecommunication facilities. Allows the Department of Transportation to contract for the installation, lease, and management of telecommunication facilities. Allows the Department of Transportation to grant longitudinal access to the right-of-way of a highway for the installation, operation, and maintenance of a telecommunication facility; provided that an agreement be executed, a permit be issued, and certain compensation be collected. Requires the Director of Transportation to adopt certain administrative rules. Authorizes the Director of Transportation to offer a broadband service provider use of and access to its spare conduits and related telecommunication facilities under certain conditions. Grants a property owner the right of just compensation from the Department of Transportation or the broadband provider for any decrease in land value due to the expanded use of an existing easement to install or operate a telecommunication facility. Creates the Smart Highway Corridor Special Fund. Exempts the Department of Transportation from rulemaking requirements for one year for the purposes of this Act.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

