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**SENATE BILL 5439**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Senators Saldaña, Kuderer, Lovelett, and Nguyen

AN ACT Relating to facilitating the coordinated installation of broadband along state highways; amending RCW 43.330.409, 43.330.532, 43.330.534, 43.330.538, 47.04.045, 47.04.047, 47.44.081, and 47.52.001; adding a new section to chapter 47.04 RCW; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  (1) The legislature finds that:

(a) Increasing broadband access to unserved areas of the state provides a public benefit to the citizens of Washington by allowing full participation in society and the modern economy, and enabling access to health care, education, and essential services, including public safety;

(b) Achieving affordable and quality broadband access for all Washingtonians will require sustained investment, research, local and community participation, and partnerships between private, public, and nonprofit entities;

(c) Providing for additional coordination across sectors to increase broadband access in unserved areas is in the best interest of the state; and

(d) Expanding broadband access, especially broadband conduit along roadways, provides commensurate benefits to the transportation system and motor vehicle users in terms of reducing congestion by allowing for more telework, and laying the foundation for a transportation system increasingly more reliant on autonomous vehicles.

(2) Therefore, the legislature intends to expand broadband access to unserved areas throughout the state by increasing broadband infrastructure coordination opportunities, including a registry for broadband infrastructure projects, allowing installation of infrastructure during state road construction projects, and further mapping of broadband deployment locations.

**Sec.**  RCW 43.330.409 and 2011 1st sp.s. c 43 s 606 are each amended to read as follows:

(1) The department, in coordination with the utilities and transportation commission, and such advisors as the department chooses, may prepare regular reports that identify the following:

(a) The geographic areas of greatest priority for the deployment of advanced telecommunications infrastructure in the state;

(b) A detailed explanation of how any amount of funding received from the federal government for the purposes of broadband mapping, deployment, and adoption will be or have been used; ((~~and~~))

(c) A determination of how nonfederal sources may be utilized to achieve the purposes of broadband mapping, deployment, and adoption activities in the state;

(d) Where available, the locations where broadband infrastructure has been deployed around the state during the prior five-year period, including along state highways; and

(e) Where available, the locations where broadband infrastructure is planned to be deployed around the state, including along state highways.

(2) To the greatest extent possible, the initial report should be based upon the information identified in the geographic system maps developed under the requirements of this chapter.

(3) The initial report should be delivered to the appropriate committees of the legislature as soon as feasible, but no later than January 18, 2010.

(4) Any future reports prepared by the department based upon the requirements of subsection (1) of this section should be delivered to the appropriate committees of the legislature by January 15th of each year.

**Sec.**  RCW 43.330.532 and 2019 c 365 s 3 are each amended to read as follows:

(1) The governor's statewide broadband office is established. The director of the office must be appointed by the governor. The office may employ staff necessary to carry out the office's duties as prescribed by chapter 365, Laws of 2019, subject to the availability of amounts appropriated for this specific purpose.

(2) The purpose of the office is to encourage, foster, develop, and improve affordable, quality broadband within the state in order to:

(a) Drive job creation, promote innovation, improve economic vitality, and expand markets for Washington businesses;

(b) Serve the ongoing and growing needs of Washington's education systems, health care systems, public safety systems, transportation systems, industries and business, governmental operations, and citizens; and

(c) Improve broadband accessibility for unserved communities and populations.

**Sec.**  RCW 43.330.534 and 2019 c 365 s 4 are each amended to read as follows:

(1) The office has the power and duty to:

(a) Serve as the central broadband planning body for the state of Washington;

(b) Coordinate with local governments, tribes, public and private entities, nonprofit organizations, and consumer-owned and investor-owned utilities to develop strategies and plans promoting deployment of broadband infrastructure and greater broadband access, while protecting proprietary information;

(c) Review existing broadband initiatives, policies, and public and private investments;

(d) Develop, recommend, and implement a statewide plan to encourage cost-effective broadband access and to make recommendations for increased usage, particularly in rural and other unserved areas;

(e) Update the state's broadband goals and definitions for broadband service in unserved areas as technology advances, except that the state's definition for broadband service may not be actual speeds less than twenty-five megabits per second download and three megabits per second upload; ((~~and~~))

(f) Encourage public-private partnerships to increase deployment and adoption of broadband services and applications; and

(g) In consultation with local governments and the Washington utilities and transportation commission, create a registration system for broadband service providers applying to install broadband infrastructure that provides automatic notice to the department of transportation and other broadband service providers applying for installation permits in the same area so that opportunities for coordination can be identified.

(2) When developing plans or strategies for broadband deployment, the office must consider:

(a) Partnerships between communities, tribes, nonprofit organizations, local governments, consumer-owned and investor-owned utilities, and public and private entities;

(b) Funding opportunities that provide for the coordination of public, private, state, and federal funds for the purposes of making broadband infrastructure or broadband services available to rural and unserved areas of the state;

(c) Barriers to the deployment, adoption, and utilization of broadband service, including affordability of service and project coordination logistics; and

(d) Requiring minimum broadband service of twenty-five megabits per second download and three megabits per second upload speed, that is scalable to faster service.

(3) The office may assist applicants for the grant and loan program created in RCW 43.155.160 with seeking federal funding or matching grants and other grant opportunities for deploying broadband services.

(4) The office may take all appropriate steps to seek and apply for federal funds for which the office is eligible, and other grants, and accept donations, and must deposit these funds in the statewide broadband account created in RCW 43.155.165.

(5) In carrying out its purpose, the office may collaborate with the utilities and transportation commission, the office of the chief information officer, the department of commerce, the community economic revitalization board, the department of transportation, the public works board, the state librarian, and all other relevant state agencies.

**Sec.**  RCW 43.330.538 and 2019 c 365 s 6 are each amended to read as follows:

(1) Beginning January 1, 2021, and biennially thereafter, the office shall report to the legislative committees with jurisdiction over broadband policy and finance on the office's activities during the previous two years.

(2) The report must, at a minimum, contain:

(a) An analysis of the current availability and use of broadband, including average broadband speeds, within the state;

(b) Information gathered from schools, libraries, hospitals, and public safety facilities across the state, determining the actual speed and capacity of broadband currently in use and the need, if any, for increases in speed and capacity to meet current or anticipated needs;

(c) An overview of incumbent broadband infrastructure within the state;

(d) A summary of the office's activities in coordinating broadband infrastructure development with the department of transportation and the public works board, including a summary of funds awarded under RCW 43.155.160;

(e) Suggested policies, incentives, and legislation designed to accelerate the achievement of the goals under RCW 43.330.536; and

(f) Any proposed legislative and policy initiatives.

**Sec.**  RCW 47.04.045 and 2003 c 244 s 5 are each amended to read as follows:

(1) For the purposes of this section:

(a) "Broadband conduit" means a conduit used to support broadband infrastructure, including fiber optic cables.

(b) "Right-of-way" means all state-owned land within a state highway corridor.

((~~(b)~~)) (c) "Service provider" means every corporation, company, association, joint stock association, firm, partnership, or person that owns, operates, or manages any personal wireless service facility or broadband conduit. "Service provider" includes a service provider's contractors, subcontractors, and legal successors.

(2)(a) Prior to construction of any road construction project that breaks ground or pavement, the department shall provide at least a 60-day notice by website or electronic subscription service to service providers operating within the same county or counties so that the department and service providers can proactively collaborate on the installation of personal wireless service facilities and broadband conduit during road construction projects. This focus on communication and coordination will align infrastructure needs, and help more Washingtonians achieve affordable and quality telecommunications and broadband access.

(b) If a service provider responds to the department's notice within 30 days, the department may schedule a consultation meeting with the service provider to review installation opportunities.

(c) The department may determine the feasibility and viability of any collaboration project and is under no duty to provide for installation.

(3) The department shall establish a process for issuing a lease for the use of the right-of-way by a service provider and shall require that telecommunications equipment be colocated on the same structure whenever practicable. Consistent with federal highway administration approval, the lease must include the right of direct ingress and egress from the highway for construction and maintenance of the personal wireless service facility or broadband conduit during nonpeak hours if public safety is not adversely affected. Direct ingress and egress may be allowed at any time for the construction of the facility or conduit if public safety is not adversely affected and if construction will not substantially interfere with traffic flow during peak traffic periods. The lease may specify an indirect ingress and egress to the facility or conduit if it is reasonable and available for the particular location.

((~~(3)~~)) (4) The cost of the lease must be limited to the fair market value of the portion of the right-of-way being used by the service provider and the direct administrative expenses incurred by the department in processing the lease application.

If the department and the service provider are unable to agree on the cost of the lease, the service provider may submit the cost of the lease to binding arbitration by serving written notice on the department. Within thirty days of receiving the notice, each party shall furnish a list of acceptable arbitrators. The parties shall select an arbitrator; failing to agree on an arbitrator, each party shall select one arbitrator and the two arbitrators shall select a third arbitrator for an arbitration panel. The arbitrator or panel shall determine the cost of the lease based on comparable siting agreements. Costs of the arbitration, including compensation for the arbitrator's services, must be borne equally by the parties participating in the arbitration and each party shall bear its own costs and expenses, including legal fees and witness expenses, in connection with the arbitration proceeding.

((~~(4)~~)) (5) The department shall act on an application for a lease within sixty days of receiving a completed application, unless a service provider consents to a different time period.

((~~(5)~~)) (6) The reasons for a denial of a lease application must be supported by substantial evidence contained in a written record.

((~~(6)~~)) (7) The department may adopt rules to implement this section.

((~~(7)~~)) (8) All lease money paid to the department under this section shall be deposited in the motor vehicle fund created in RCW 46.68.070.

NEW SECTION. **Sec.**  A new section is added to chapter 47.04 RCW to read as follows:

(1) If notice is given to relevant service providers as outlined in RCW 47.04.045 and no providers are ready or able to participate in coordination of the installation of personal wireless service facilities or broadband conduit during road construction projects, the department may enlist its contractors to install facilities or conduit as part of road construction projects in order to:

(a) Reduce future traffic impacts to the traveling public on the roadway;

(b) Support the vehicle miles traveled reduction and congestion management goals of the state by allowing for more telework; and

(c) Proactively prepare the transportation system for the widespread development and use of autonomous vehicles.

(2)(a) The department may allow nonprofit service providers to use a right-of-way for the installation of broadband infrastructure in rural and unserved areas at no cost to the provider.

(b) If the department reaches an agreement with a nonprofit service provider that allows the service provider to install broadband infrastructure at no charge, there must be quantifiable commensurate benefit to the transportation system and motor vehicle users from the use of the broadband conduit, as described in section 1(1)(d) of this act.

(3) As used in this section:

(a) "Broadband conduit" has the same meaning as in RCW 47.04.045.

(b) "Broadband infrastructure" has the same meaning as in RCW 43.330.530.

(c) "Nonprofit service provider" means a service provider no part of the income of which is distributable to its members, directors, or officers.

(d) "Rural area" means a county with a population density of fewer than 100 persons per square mile or a county smaller than 225 square miles, as determined by the office of financial management and published each year by the department for the period July 1st to June 30th.

(e) "Unserved areas" has the same meaning as in RCW 43.330.530.

**Sec.**  RCW 47.04.047 and 2004 c 131 s 2 are each amended to read as follows:

Personal wireless service ((~~is a~~)) and broadband service are critical ((~~part~~)) parts of the state's infrastructure. The rapid deployment of personal wireless service facilities ((~~is~~)) and broadband infrastructure are critical to ensure public safety, network access, quality of service, and rural economic development.

It is the declared policy of this state to assure that the use of rights-of-way of state highways accommodate the deployment of personal wireless service facilities and broadband infrastructure consistent with highway safety and the preservation of the public investment in state highway facilities.

**Sec.**  RCW 47.44.081 and 2003 c 244 s 3 are each amended to read as follows:

This chapter does not apply to leases issued for the deployment of personal wireless service facilities or broadband infrastructure as provided in RCW 47.04.045.

**Sec.**  RCW 47.52.001 and 2004 c 131 s 1 are each amended to read as follows:

(1) Unrestricted access to and from public highways has resulted in congestion and peril for the traveler. It has caused undue slowing of all traffic in many areas. The investment of the public in highway facilities has been impaired and highway facilities costing vast sums of money will have to be relocated and reconstructed.

(2) Personal wireless service ((~~is a~~)) and broadband service are critical ((~~part~~)) parts of the state's infrastructure. The rapid deployment of personal wireless service facilities ((~~is~~)) and broadband infrastructure are critical to ensure public safety, network access, quality of service, and rural economic development.

(3) It is, therefore, the declared policy of this state to limit access to the highway facilities of this state in the interest of highway safety and for the preservation of the investment of the public in such facilities, and to assure that the use of rights-of-way of limited access facilities accommodate the deployment of personal wireless service facilities and broadband infrastructure consistent with these interests.

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