

ESSB 5439 - H COMM AMD

By Committee on Transportation

1 Strike everything after the enacting clause and insert the
2 following:

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

4 (a) Increasing broadband access to unserved areas of the state
5 provides an increasingly essential public benefit to the citizens of
6 Washington by allowing full participation in society and the modern
7 economy, and enabling access to health care, education, the use of
8 other technologies, and essential services, including public safety;

9 (b) Facilitating and accelerating affordable and quality
10 statewide broadband access for all Washingtonians will require
11 sustained investment, research, local and community participation,
12 and the formation of strategic partnerships between private, public,
13 and nonprofit entities;

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

17 (d) Maximizing the use of rights-of-way during construction or
18 repair of transportation systems offers cost-effective opportunities
19 for extending and improving broadband and high-speed internet
20 connections throughout the state; and

21 (e) Expanding broadband access, especially broadband conduit
22 along roadways, provides commensurate benefits to the transportation
23 system and motor vehicle users in terms of reducing the use of roads
24 and alleviating congestion by allowing for more telework, and laying
25 the foundation for a transportation system increasingly more reliant
26 on autonomous vehicles.

27 (2) The legislature also finds that there is a need to utilize
28 near-term options and opportunities along state highway rights-of-way
29 to drive broadband network expansion and for undertaking longer-term
30 planning of activities to develop additional paths to facilitate the
31 expansion of broadband networks along state highway rights-of-way.

1 (3) Therefore, the legislature intends to expedite the expansion
2 of broadband access to unserved areas throughout the state by
3 increasing broadband infrastructure coordination, including through
4 collaboration between the statewide broadband office and the
5 department of transportation; proactively facilitating installation
6 and improvement of infrastructure during state road construction
7 projects; and studying recommendations related to the department of
8 transportation's role in broadband service expansion efforts.

9 **Sec. 2.** RCW 43.330.532 and 2019 c 365 s 3 are each amended to
10 read as follows:

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

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

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

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

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

27 **Sec. 3.** RCW 43.330.534 and 2019 c 365 s 4 are each amended to
28 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **Sec. 4.** RCW 43.330.538 and 2019 c 365 s 6 are each amended to
2 read as follows:

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

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

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

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

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

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

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

23 (f) Any proposed legislative and policy initiatives.

24 NEW SECTION. **Sec. 5.** A new section is added to chapter 47.44
25 RCW to read as follows:

26 (1) The department is directed to adopt and maintain an agency
27 policy that requires the department to proactively provide broadband
28 facility owners with information about planned state highway projects
29 to enable collaboration between broadband facility owners and the
30 department to identify opportunities for the installation of
31 broadband facilities during the appropriate phase of these projects
32 when such opportunities exist.

33 (2) If no owners are ready or able to participate in coordination
34 of the installation of broadband infrastructure concurrently with
35 state highway projects, the department may enlist its contractors to
36 install broadband conduit as part of road construction projects in
37 order to directly benefit the transportation system and motor vehicle
38 users by:

1 (a) Reducing future traffic impacts to the traveling public on
2 the roadway;

3 (b) Supporting the vehicle miles traveled reduction and
4 congestion management goals of the state by allowing for more
5 telework; or

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

8 (3) Broadband facility owners must first obtain a franchise
9 granted by the department pursuant to RCW 47.44.010 and 47.44.020
10 before installing broadband facilities within the department's
11 conduit. The costs for installation and maintenance of such broadband
12 facilities shall be the responsibility of the broadband facility
13 owner. The department may adopt rules establishing a fee schedule for
14 occupancy of broadband facilities within the department's conduit
15 consistent with federal law.

16 (4) As used in this section:

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

19 (b) "Broadband infrastructure" has the same meaning as in RCW
20 43.330.530.

21 **Sec. 6.** RCW 47.52.001 and 2004 c 131 s 1 are each amended to
22 read as follows:

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

28 (2) (~~Personal wireless service~~) Broadband, which includes a
29 range of high-speed transmission technologies, including fiber optic
30 lines and personal wireless service facilities, is a critical part of
31 the state's infrastructure. The rapid deployment of (~~personal~~
32 ~~wireless service~~) broadband facilities is critical to ensure public
33 safety, network access, quality of service, and rural economic
34 development.

35 (3) It is, therefore, the declared policy of this state to limit
36 access to the highway facilities of this state in the interest of
37 highway safety and for the preservation of the investment of the
38 public in such facilities, and to (~~assure~~) ensure that the use of
39 rights-of-way of limited access facilities accommodate the deployment

1 of (~~personal wireless service~~) broadband facilities consistent with
2 these interests. In furtherance of this policy, the department is
3 directed to adopt and maintain an agency policy that requires the
4 department to proactively provide broadband facility owners with
5 information about planned limited access highway projects to enable
6 collaboration between broadband facility owners and the department to
7 identify opportunities for the installation of broadband facilities
8 during the appropriate phase of these projects when such
9 opportunities exist. Coordination between the department and
10 broadband facility owners under this section must comply with
11 applicable state and federal law including, but not limited to,
12 chapter 47.44 RCW and RCW 47.04.045.

13 NEW SECTION. Sec. 7. (1) Subject to the availability of amounts
14 appropriated for this specific purpose in the omnibus transportation
15 appropriations act, the joint transportation committee shall oversee
16 a consultant study to recommend:

17 (a) An effective department of transportation strategy, and
18 specific highway corridors, that could be used to address missing
19 fiber connections and inadequate broadband service in parts of the
20 state unserved and underserved by broadband facilities while also
21 aiding the achievement of the state broadband goals specified in RCW
22 43.330.536. As part of this recommendation, the following areas must
23 also be addressed:

24 (i) What the appropriate taxonomy to apply to areas unserved or
25 underserved by broadband is to better prioritize and contextualize
26 the urgency of the need for broadband infrastructure in a given area;
27 and

28 (ii) When the inclusion of broadband conduit installation in a
29 transportation project is recommended as the most effective means of
30 facilitating broadband access, rather than an alternative broadband
31 facility placement, taking into account potential costs, and subject
32 to any limitations in understanding potential costs of installation
33 as part of a transportation project not yet undertaken;

34 (b) The role of the Washington state department of transportation
35 and the statewide broadband office in a coordinated approach for
36 broadband development statewide on highway rights-of-way that
37 includes the adaptation of existing programs and activities to
38 further a state initiative to expand and improve access to broadband;

1 (c) The most promising planning and financing tools that could be
2 used by the department of transportation to provide the state with
3 greater ability to install conduit in anticipation of future
4 broadband fiber occupancy by others;

5 (d) Opportunities for mutually beneficial partnerships between
6 the department of transportation and broadband service providers that
7 could provide broadband services for transportation purposes such as
8 intelligent transportation systems, cooperative automated
9 transportation/autonomous vehicles, transportation demand management,
10 and highway maintenance activities; and

11 (e) Strategies for the mitigation of potential safety,
12 operations, and preservation impacts to transportation related to the
13 recommendations made in (a) through (d) of this subsection.

14 (2) The study must consider the most relevant best practices in
15 other states and their potential application in Washington.

16 (3) The study must also include an examination of any state and
17 federal laws and regulations that could prevent or limit the
18 implementation of these recommendations, as well as recommendations
19 for modifications to the applicable state laws and regulations and
20 recommended federal actions that could be requested by Washington
21 state legislators.

22 (4) The joint transportation committee shall consult with the
23 department of transportation, the Washington statewide broadband
24 office, other state agencies and local jurisdictions, public and
25 private utility providers, and public and private broadband
26 providers, as necessary, during development of the study's
27 recommendations to ensure the relevance and applicability of the
28 recommendations to the state.

29 (5) The joint transportation committee shall issue a report of
30 its findings and recommendations to the house of representatives and
31 senate transportation committees by January 1, 2022.

32 **Sec. 8.** RCW 47.44.010 and 2001 c 201 s 5 are each amended to
33 read as follows:

34 (1) The department of transportation may grant franchises to
35 persons, associations, private or municipal corporations, the United
36 States government, or any agency thereof, to use any state highway
37 for the construction and maintenance of water pipes, flume, gas, oil
38 or coal pipes, telephone, telegraph (~~and~~), fiber optic, electric
39 light and power lines and conduits, trams or railways, and any

1 structures or facilities that are part of an urban public
2 transportation system owned or operated by a municipal corporation,
3 agency, or department of the state of Washington other than the
4 department of transportation, and any other such facilities. In order
5 to minimize the disruption to traffic and damage to the roadway, the
6 department is encouraged to develop a joint trenching policy with
7 other affected jurisdictions so that all permittees and franchisees
8 requiring access to ground under the roadway may do so at one time.

9 (2) All applications for the franchise must be made in writing
10 and subscribed by the applicant, and describe the state highway or
11 portion thereof over which franchise is desired and the nature of the
12 franchise. The application must also include the identification of
13 all jurisdictions affected by the franchise and the names of other
14 possible franchisees who should receive notice of the application for
15 a franchise.

16 (3) The department of transportation shall adopt rules providing
17 for a hearing or an opportunity for a hearing with reasonable public
18 notice thereof with respect to any franchise application involving
19 the construction and maintenance of utilities or other facilities
20 within the highway right-of-way which the department determines may
21 (a) during construction, significantly disrupt the flow of traffic or
22 use of driveways or other facilities within the right-of-way, or (b)
23 during or following construction, cause a significant and adverse
24 effect upon the surrounding environment."

25 Correct the title.

EFFECT: Makes the following changes related to coordinating
installation of broadband along state highways:

(1) Authorizes WSDOT to adopt rules establishing a fee schedule
for occupancy of broadband facilities within WSDOT broadband conduit
consistent with federal law.

(2) Modifies the requirements of the JTC study to include in its
recommendations information related to a taxonomy to evaluate
unserved and underserved broadband needs, when the inclusion of
broadband conduit installation in a transportation project is
recommended, the role of WSDOT in a coordinated approach for
broadband development, consideration of the most relevant best
practices in other states, and recommendations for federal actions
that could be requested by Washington state legislators.

(3) Includes in the stakeholders to be consulted as part of the
JTC study public and private utility providers and public and private
broadband providers.

(4) Makes minor modifications to language in the intent section.

--- **END** ---