

# SENATE BILL REPORT

## ESHB 1457

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As Passed Senate - Amended, April 10, 2021

**Title:** An act relating to facilitating the installation of broadband facilities on limited access highways.

**Brief Description:** Facilitating the installation of broadband facilities on limited access highways.

**Sponsors:** House Committee on Transportation (originally sponsored by Representatives Wylie, Riccelli, Kloba, Santos, Slatter, Shewmake, Ramel and Hackney).

**Brief History:** Passed House: 3/8/21, 92-5.

**Committee Activity:** Transportation: 3/16/21, 3/30/21 [DPA].

**Floor Activity:** Passed Senate - Amended: 4/10/21, 47-0.

### Brief Summary of Amended Bill

- Directs the Statewide Broadband Office to consider transportation when coordinating and reporting on broadband infrastructure development.
- Requires the Washington State Department of Transportation (WSDOT) to adopt and maintain a policy to provide broadband facility owners with information about planned highway projects to facilitate broadband installation coordination, and if no opportunities can be identified, allows WSDOT to proactively install conduit and issue franchises for its use.
- Adds a Joint Transportation Committee study to provide recommendations related to WSDOT's role in broadband service expansion efforts, subject to appropriations.

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### SENATE COMMITTEE ON TRANSPORTATION

**Majority Report:** Do pass as amended.

Signed by Senators Hobbs, Chair; Saldaña, Vice Chair; King, Ranking Member;

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

Cleveland, Das, Fortunato, Hawkins, Lovelett, Nguyen, Nobles, Padden, Randall, Sheldon, Wilson, C. and Wilson, J.

**Staff:** Erica Bramlet (786-7321)

**Background:** Broadband. Broadband is any service providing advanced telecommunications capability and Internet access with certain transmission speeds. There are several transmission technologies, some of which require installing fiber optic technology in conduits, which are often located in public rights-of-way similar to other utility infrastructure.

Highways and Utilities. The Washington State Department of Transportation (WSDOT) issues utility permits and franchises on highway rights-of-way for water, gas, electricity, telephone, and telecommunications at no cost except for recovery of staff labor costs.

If a service provider is granted a permit, franchise, or lease by WSDOT and installs infrastructure in the rights-of-way, whether it be underground, at-grade, above grade, or some combination thereof, it is required to follow WSDOT standards for any trenching, pavement restoration, or traffic control. Service providers are also required to construct and maintain their facilities at their own expense, including relocation if a future WSDOT project requires it. The Washington State Supreme Court held, under the Eighteenth Amendment, that the costs of utility facility relocation may not be paid with fuel tax dollars because these expenditures are not exclusively for highway purposes.

In 2018, the U.S. Secretary of Transportation was directed under the MOBILE NOW Act to issue a regulation, for which rulemaking is still in progress, requiring each state receiving federal-aid highway funds to meet the following requirements:

- identify a broadband utility coordinator to facilitate broadband infrastructure rights-of-way efforts within the state;
- register broadband infrastructure entities that seek to be included in those facilitation efforts;
- establish an electronic process to annually notify broadband infrastructure entities of the state transportation improvement program; and
- coordinate statewide and local telecommunications and land use plans, including strategies to minimize repeated excavations involving the installation of broadband infrastructure in a right-of-way.

**Summary of Amended Bill:** The SBO is encouraged to collaborate with WSDOT and report biennially on this coordination as part of an existing reporting requirement. Addressing the growing needs of the transportation system is added as an expected outcome of the SBO's purpose in increasing access to broadband.

WSDOT must develop a policy compliant with state and federal laws to provide information to broadband providers about planned state highway projects prior to

construction so that potential installation of broadband facilities can be coordinated. If no providers are ready or able to coordinate, WSDOT may enlist its contractors to install conduit as part of a transportation project to minimize future traffic impacts, support vehicle miles traveled and congestion reduction goals by supporting more telework, and preparing the transportation system for widespread use of autonomous vehicles. Before use of this conduit, broadband providers must first obtain a franchise from WSDOT. Installation and maintenance costs are the responsibility of the broadband provider. WSDOT may adopt rules to establish a fee schedule for occupancy of broadband facilities within any of their conduits.

Broadband infrastructure is identified as a critical part of the state's infrastructure, and is thus added as one of the reasons for allowing access to limited-access highway rights-of-way. Clarification is added that fiber optic is eligible for WSDOT franchises to use state highway rights-of-way.

Subject to appropriation, the Joint Transportation Committee is directed to oversee a consultant study to provide recommendations on the following by January 1, 2022:

- a WSDOT strategy, and specific highway corridors, that could be used to address missing or inadequate broadband service in parts of the state, including how to prioritize unserved versus underserved areas and when installation as part of a transportation project might be most effective;
- WSDOT's role in a statewide coordinated broadband development approach;
- planning and financial tools that could provide the state with greater ability to install conduit in anticipation of future broadband fiber occupancy;
- opportunities for mutually beneficial partnerships between WSDOT and broadband service providers for broadband for transportation purposes; and
- strategies for mitigating potential safety, operations, and preservation impacts to transportation related to the above recommendations.

**Appropriation:** The bill contains a section or sections to limit implementation to the availability of amounts appropriated for that specific purpose.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Engrossed Substitute House Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: With everyone working from home, broadband has become critical soft infrastructure. Incorporating broadband into transportation projects will both help accelerate broadband deployment statewide by filling middle- and last-mile gaps, and benefit the transportation system itself in terms of serving as a platform for next-generation highways. Allowing

placement of broadband facilities in highway rights-of-way is a simple but meaningful way to utilize the state's corridors to meet state broadband goals. The JTC study will help get longer-term specific recommendations in terms of removing significant logistical barriers and providing statewide broadband access.

**Persons Testifying:** PRO: Representative Sharon Wylie, Prime Sponsor; Reema Griffith, Washington State Transportation Commission; Bill Waterfield.

**Persons Signed In To Testify But Not Testifying:** No one.