

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1457

Chapter 258, Laws of 2021

67th Legislature
2021 Regular Session

BROADBAND FACILITIES—LIMITED ACCESS HIGHWAYS

EFFECTIVE DATE: July 25, 2021

Passed by the House April 15, 2021
Yeas 96 Nays 0

LAURIE JINKINS

**Speaker of the House of
Representatives**

Passed by the Senate April 10, 2021
Yeas 47 Nays 0

DENNY HECK

President of the Senate

Approved May 12, 2021 2:39 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1457** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN

Chief Clerk

FILED

May 12, 2021

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1457

AS AMENDED BY THE SENATE

Passed Legislature - 2021 Regular Session

State of Washington 67th Legislature 2021 Regular Session

By House Transportation (originally sponsored by Representatives Wylie, Riccelli, Kloba, Santos, Slatter, Shewmake, Ramel, and Hackney)

READ FIRST TIME 02/22/21.

1 AN ACT Relating to facilitating the coordinated installation of
2 broadband along state highways; amending RCW 43.330.532, 43.330.534,
3 43.330.538, 47.52.001, and 47.44.010; adding a new section to chapter
4 47.44 RCW; and creating new sections.

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

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

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

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

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

20 (d) Maximizing the use of rights-of-way during construction or
21 repair of transportation systems offers cost-effective opportunities

1 for extending and improving broadband and high-speed internet
2 connections throughout the state; and

3 (e) Expanding broadband access, especially broadband conduit
4 along roadways, provides commensurate benefits to the transportation
5 system and motor vehicle users in terms of reducing the use of roads
6 and alleviating congestion by allowing for more telework, and laying
7 the foundation for a transportation system increasingly more reliant
8 on autonomous vehicles.

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

14 (3) Therefore, the legislature intends to expedite the expansion
15 of broadband access to unserved areas throughout the state by
16 increasing broadband infrastructure coordination, including through
17 collaboration between the statewide broadband office and the
18 department of transportation; proactively facilitating installation
19 and improvement of infrastructure during state road construction
20 projects; and studying recommendations related to the department of
21 transportation's role in broadband service expansion efforts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (3) The office may assist applicants for the grant and loan
39 program created in RCW 43.155.160 with seeking federal funding or

1 matching grants and other grant opportunities for deploying broadband
2 services.

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

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

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

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

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

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

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

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

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

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

35 (f) Any proposed legislative and policy initiatives.

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

1 (1) The department is directed to adopt and maintain an agency
2 policy that requires the department to proactively provide broadband
3 facility owners with information about planned state highway projects
4 to enable collaboration between broadband facility owners and the
5 department to identify opportunities for the installation of
6 broadband facilities during the appropriate phase of these projects
7 when such opportunities exist.

8 (2) If no owners are ready or able to participate in coordination
9 of the installation of broadband infrastructure concurrently with
10 state highway projects, the department may enlist its contractors to
11 install broadband conduit as part of road construction projects in
12 order to directly benefit the transportation system and motor vehicle
13 users by:

14 (a) Reducing future traffic impacts to the traveling public on
15 the roadway;

16 (b) Supporting the vehicle miles traveled reduction and
17 congestion management goals of the state by allowing for more
18 telework; or

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

21 (3) Broadband facility owners must first obtain a franchise
22 granted by the department pursuant to RCW 47.44.010 and 47.44.020
23 before installing broadband facilities within the department's
24 conduit. The costs for installation and maintenance of such broadband
25 facilities shall be the responsibility of the broadband facility
26 owner. The department may adopt rules establishing a fee schedule for
27 occupancy of broadband facilities within the department's conduit
28 consistent with federal law.

29 (4) As used in this section:

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

32 (b) "Broadband infrastructure" has the same meaning as in RCW
33 43.330.530.

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

36 (1) Unrestricted access to and from public highways has resulted
37 in congestion and peril for the traveler. It has caused undue slowing
38 of all traffic in many areas. The investment of the public in highway

1 facilities has been impaired and highway facilities costing vast sums
2 of money will have to be relocated and reconstructed.

3 (2) (~~Personal wireless service~~) Broadband, which includes a
4 range of high-speed transmission technologies, including fiber optic
5 lines and personal wireless service facilities, is a critical part of
6 the state's infrastructure. The rapid deployment of (~~personal~~
7 ~~wireless service~~) broadband facilities is critical to ensure public
8 safety, network access, quality of service, and rural economic
9 development.

10 (3) It is, therefore, the declared policy of this state to limit
11 access to the highway facilities of this state in the interest of
12 highway safety and for the preservation of the investment of the
13 public in such facilities, and to (~~assure~~) ensure that the use of
14 rights-of-way of limited access facilities accommodate the deployment
15 of (~~personal wireless service~~) broadband facilities consistent with
16 these interests. In furtherance of this policy, the department is
17 directed to adopt and maintain an agency policy that requires the
18 department to proactively provide broadband facility owners with
19 information about planned limited access highway projects to enable
20 collaboration between broadband facility owners and the department to
21 identify opportunities for the installation of broadband facilities
22 during the appropriate phase of these projects when such
23 opportunities exist. Coordination between the department and
24 broadband facility owners under this section must comply with
25 applicable state and federal law including, but not limited to,
26 chapter 47.44 RCW and RCW 47.04.045.

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

31 (a) An effective department of transportation strategy, and
32 specific highway corridors, that could be used to address missing
33 fiber connections and inadequate broadband service in parts of the
34 state unserved and underserved by broadband facilities while also
35 aiding the achievement of the state broadband goals specified in RCW
36 43.330.536. As part of this recommendation, the following areas must
37 also be addressed:

38 (i) What the appropriate taxonomy to apply to areas unserved or
39 underserved by broadband is to better prioritize and contextualize

1 the urgency of the need for broadband infrastructure in a given area;
2 and

3 (ii) When the inclusion of broadband conduit installation in a
4 transportation project is recommended as the most effective means of
5 facilitating broadband access, rather than an alternative broadband
6 facility placement, taking into account potential costs, and subject
7 to any limitations in understanding potential costs of installation
8 as part of a transportation project not yet undertaken;

9 (b) The role of the Washington state department of transportation
10 and the statewide broadband office in a coordinated approach for
11 broadband development statewide on highway rights-of-way that
12 includes the adaptation of existing programs and activities to
13 further a state initiative to expand and improve access to broadband;

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

18 (d) Opportunities for mutually beneficial partnerships between
19 the department of transportation and broadband service providers that
20 could provide broadband services for transportation purposes such as
21 intelligent transportation systems, cooperative automated
22 transportation/autonomous vehicles, transportation demand management,
23 and highway maintenance activities; and

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

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

29 (3) The study must also include an examination of any state and
30 federal laws and regulations that could prevent or limit the
31 implementation of these recommendations, as well as recommendations
32 for modifications to the applicable state laws and regulations and
33 recommended federal actions that could be requested by Washington
34 state legislators.

35 (4) The joint transportation committee shall consult with the
36 department of transportation, the Washington statewide broadband
37 office, other state agencies and local jurisdictions, public and
38 private utility providers, and public and private broadband
39 providers, as necessary, during development of the study's

1 recommendations to ensure the relevance and applicability of the
2 recommendations to the state.

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

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

8 (1) The department of transportation may grant franchises to
9 persons, associations, private or municipal corporations, the United
10 States government, or any agency thereof, to use any state highway
11 for the construction and maintenance of water pipes, flume, gas, oil
12 or coal pipes, telephone, telegraph (~~and~~), fiber optic, electric
13 light and power lines and conduits, trams or railways, and any
14 structures or facilities that are part of an urban public
15 transportation system owned or operated by a municipal corporation,
16 agency, or department of the state of Washington other than the
17 department of transportation, and any other such facilities. In order
18 to minimize the disruption to traffic and damage to the roadway, the
19 department is encouraged to develop a joint trenching policy with
20 other affected jurisdictions so that all permittees and franchisees
21 requiring access to ground under the roadway may do so at one time.

22 (2) All applications for the franchise must be made in writing
23 and subscribed by the applicant, and describe the state highway or
24 portion thereof over which franchise is desired and the nature of the
25 franchise. The application must also include the identification of
26 all jurisdictions affected by the franchise and the names of other
27 possible franchisees who should receive notice of the application for
28 a franchise.

29 (3) The department of transportation shall adopt rules providing
30 for a hearing or an opportunity for a hearing with reasonable public
31 notice thereof with respect to any franchise application involving
32 the construction and maintenance of utilities or other facilities
33 within the highway right-of-way which the department determines may
34 (a) during construction, significantly disrupt the flow of traffic or
35 use of driveways or other facilities within the right-of-way, or (b)
36 during or following construction, cause a significant and adverse
37 effect upon the surrounding environment.

Passed by the House April 15, 2021.
Passed by the Senate April 10, 2021.

Approved by the Governor May 12, 2021.
Filed in Office of Secretary of State May 12, 2021.

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