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**ENGROSSED SUBSTITUTE SENATE BILL 5439**

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

**By** Senate Transportation (originally sponsored by Senators Saldaña, Kuderer, Lovelett, and Nguyen)

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

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 collaboration between the statewide broadband office and the department of transportation, proactively facilitating installation of infrastructure during state road construction projects and studying recommendations related to the department of transportation's role in broadband service expansion efforts.

**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.

(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.

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

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

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

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

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

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

(3) Broadband facility owners must first obtain a franchise granted by the department pursuant to RCW 47.44.010 and 47.44.020 before installing broadband facilities within the department's conduit. The costs for installation and maintenance of such broadband facilities shall be the responsibility of the broadband facility owner.

(4) As used in this section:

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

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

**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~~)) Broadband, which includes a range of high-speed transmission technologies, including fiber optic lines and personal wireless service facilities, is a critical part of the state's infrastructure. The rapid deployment of ((~~personal wireless service~~)) broadband facilities is 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~~)) ensure that the use of rights-of-way of limited access facilities accommodate the deployment of ((~~personal wireless service~~)) broadband facilities consistent with these interests. In furtherance of this policy, the department is directed to adopt and maintain an agency policy that requires the department to proactively provide broadband facility owners with information about planned limited access highway projects to enable collaboration between broadband facility owners and the department to identify opportunities for the installation of broadband facilities during the appropriate phase of these projects when such opportunities exist. Coordination between the department and broadband facilities under this section must comply with applicable state and federal law including, but not limited to, chapter 47.44 RCW and RCW 47.04.045.

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

(a) An effective department of transportation strategy, and specific state highway corridors, that could be used to address missing fiber connections and inadequate broadband service in parts of the state underserved by broadband facilities;

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

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

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

(2) The study must also include an examination of any state and federal laws and regulations that could prevent or limit the implementation of these recommendations, as well as recommendations for modifications to the applicable state laws and regulations.

(3) The joint transportation committee shall consult with the department of transportation, the Washington statewide broadband office, and other state agencies and local jurisdictions, as necessary, during development of the study's recommendations to ensure the relevance and applicability of the recommendations to the state.

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

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

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

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

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