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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)

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 a public benefit to the citizens of Washington by allowing  
9 full participation in society and the modern economy, and enabling  
10 access to health care, education, and essential services, including  
11 public safety;

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

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

19 (d) Expanding broadband access, especially broadband conduit  
20 along roadways, provides commensurate benefits to the transportation  
21 system and motor vehicle users in terms of reducing congestion by

1 allowing for more telework, and laying the foundation for a  
2 transportation system increasingly more reliant on autonomous  
3 vehicles.

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

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

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

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

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

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

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

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

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

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

35 (b) Coordinate with local governments, tribes, public and private  
36 entities, nonprofit organizations, and consumer-owned and investor-  
37 owned utilities to develop strategies and plans promoting deployment

1 of broadband infrastructure and greater broadband access, while  
2 protecting proprietary information;

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

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

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

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

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

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

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

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

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

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

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

38 (5) In carrying out its purpose, the office may collaborate with  
39 the utilities and transportation commission, the office of the chief  
40 information officer, the department of commerce, the community

1 economic revitalization board, the department of transportation, the  
2 public works board, the state librarian, and all other relevant state  
3 agencies.

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

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

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

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

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

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

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

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

26 (f) Any proposed legislative and policy initiatives.

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

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

36 (2) If no owners are ready or able to participate in coordination  
37 of the installation of broadband infrastructure concurrently with  
38 state highway projects, the department may enlist its contractors to

1 install broadband conduit as part of road construction projects in  
2 order to directly benefit the transportation system and motor vehicle  
3 users by:

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

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

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

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

17 (4) As used in this section:

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

20 (b) "Broadband infrastructure" has the same meaning as in RCW  
21 43.330.530.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 during or following construction, cause a significant and adverse  
2 effect upon the surrounding environment.

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