
SENATE BILL 5439

State of Washington

67th Legislature

2021 Regular Session

By Senators Saldaña, Kuderer, Lovelett, and Nguyen

Read first time 02/09/21. Referred to Committee on Transportation.

1 AN ACT Relating to facilitating the coordinated installation of
2 broadband along state highways; amending RCW 43.330.409, 43.330.532,
3 43.330.534, 43.330.538, 47.04.045, 47.04.047, 47.44.081, and
4 47.52.001; adding a new section to chapter 47.04 RCW; and creating a
5 new section.

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

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

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

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

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

20 (d) Expanding broadband access, especially broadband conduit
21 along roadways, provides commensurate benefits to the transportation

1 system and motor vehicle users in terms of reducing congestion by
2 allowing for more telework, and laying the foundation for a
3 transportation system increasingly more reliant on autonomous
4 vehicles.

5 (2) Therefore, the legislature intends to expand broadband access
6 to unserved areas throughout the state by increasing broadband
7 infrastructure coordination opportunities, including a registry for
8 broadband infrastructure projects, allowing installation of
9 infrastructure during state road construction projects, and further
10 mapping of broadband deployment locations.

11 **Sec. 2.** RCW 43.330.409 and 2011 1st sp.s. c 43 s 606 are each
12 amended to read as follows:

13 (1) The department, in coordination with the utilities and
14 transportation commission, and such advisors as the department
15 chooses, may prepare regular reports that identify the following:

16 (a) The geographic areas of greatest priority for the deployment
17 of advanced telecommunications infrastructure in the state;

18 (b) A detailed explanation of how any amount of funding received
19 from the federal government for the purposes of broadband mapping,
20 deployment, and adoption will be or have been used; (~~and~~)

21 (c) A determination of how nonfederal sources may be utilized to
22 achieve the purposes of broadband mapping, deployment, and adoption
23 activities in the state;

24 (d) Where available, the locations where broadband infrastructure
25 has been deployed around the state during the prior five-year period,
26 including along state highways; and

27 (e) Where available, the locations where broadband infrastructure
28 is planned to be deployed around the state, including along state
29 highways.

30 (2) To the greatest extent possible, the initial report should be
31 based upon the information identified in the geographic system maps
32 developed under the requirements of this chapter.

33 (3) The initial report should be delivered to the appropriate
34 committees of the legislature as soon as feasible, but no later than
35 January 18, 2010.

36 (4) Any future reports prepared by the department based upon the
37 requirements of subsection (1) of this section should be delivered to
38 the appropriate committees of the legislature by January 15th of each
39 year.

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

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

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

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

13 (b) Serve the ongoing and growing needs of Washington's education
14 systems, health care systems, public safety systems, transportation
15 systems, industries and business, governmental operations, and
16 citizens; and

17 (c) Improve broadband accessibility for unserved communities and
18 populations.

19 **Sec. 4.** RCW 43.330.534 and 2019 c 365 s 4 are each amended to
20 read as follows:

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

22 (a) Serve as the central broadband planning body for the state of
23 Washington;

24 (b) Coordinate with local governments, tribes, public and private
25 entities, nonprofit organizations, and consumer-owned and investor-
26 owned utilities to develop strategies and plans promoting deployment
27 of broadband infrastructure and greater broadband access, while
28 protecting proprietary information;

29 (c) Review existing broadband initiatives, policies, and public
30 and private investments;

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

34 (e) Update the state's broadband goals and definitions for
35 broadband service in unserved areas as technology advances, except
36 that the state's definition for broadband service may not be actual
37 speeds less than twenty-five megabits per second download and three
38 megabits per second upload; (~~and~~)

1 (f) Encourage public-private partnerships to increase deployment
2 and adoption of broadband services and applications; and

3 (g) In consultation with local governments and the Washington
4 utilities and transportation commission, create a registration system
5 for broadband service providers applying to install broadband
6 infrastructure that provides automatic notice to the department of
7 transportation and other broadband service providers applying for
8 installation permits in the same area so that opportunities for
9 coordination can be identified.

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

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

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

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

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

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

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

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

1 **Sec. 5.** 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 **Sec. 6.** RCW 47.04.045 and 2003 c 244 s 5 are each amended to
25 read as follows:

26 (1) For the purposes of this section:

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

29 **(b)** "Right-of-way" means all state-owned land within a state
30 highway corridor.

31 (~~(b)~~) **(c)** "Service provider" means every corporation, company,
32 association, joint stock association, firm, partnership, or person
33 that owns, operates, or manages any personal wireless service
34 facility or broadband conduit. "Service provider" includes a service
35 provider's contractors, subcontractors, and legal successors.

36 **(2)(a)** Prior to construction of any road construction project
37 that breaks ground or pavement, the department shall provide at least
38 a 60-day notice by website or electronic subscription service to
39 service providers operating within the same county or counties so

1 that the department and service providers can proactively collaborate
2 on the installation of personal wireless service facilities and
3 broadband conduit during road construction projects. This focus on
4 communication and coordination will align infrastructure needs, and
5 help more Washingtonians achieve affordable and quality
6 telecommunications and broadband access.

7 (b) If a service provider responds to the department's notice
8 within 30 days, the department may schedule a consultation meeting
9 with the service provider to review installation opportunities.

10 (c) The department may determine the feasibility and viability of
11 any collaboration project and is under no duty to provide for
12 installation.

13 (3) The department shall establish a process for issuing a lease
14 for the use of the right-of-way by a service provider and shall
15 require that telecommunications equipment be colocated on the same
16 structure whenever practicable. Consistent with federal highway
17 administration approval, the lease must include the right of direct
18 ingress and egress from the highway for construction and maintenance
19 of the personal wireless service facility or broadband conduit during
20 nonpeak hours if public safety is not adversely affected. Direct
21 ingress and egress may be allowed at any time for the construction of
22 the facility or conduit if public safety is not adversely affected
23 and if construction will not substantially interfere with traffic
24 flow during peak traffic periods. The lease may specify an indirect
25 ingress and egress to the facility or conduit if it is reasonable and
26 available for the particular location.

27 ~~((3))~~ (4) The cost of the lease must be limited to the fair
28 market value of the portion of the right-of-way being used by the
29 service provider and the direct administrative expenses incurred by
30 the department in processing the lease application.

31 If the department and the service provider are unable to agree on
32 the cost of the lease, the service provider may submit the cost of
33 the lease to binding arbitration by serving written notice on the
34 department. Within thirty days of receiving the notice, each party
35 shall furnish a list of acceptable arbitrators. The parties shall
36 select an arbitrator; failing to agree on an arbitrator, each party
37 shall select one arbitrator and the two arbitrators shall select a
38 third arbitrator for an arbitration panel. The arbitrator or panel
39 shall determine the cost of the lease based on comparable siting
40 agreements. Costs of the arbitration, including compensation for the

1 arbitrator's services, must be borne equally by the parties
2 participating in the arbitration and each party shall bear its own
3 costs and expenses, including legal fees and witness expenses, in
4 connection with the arbitration proceeding.

5 ~~((4))~~ (5) The department shall act on an application for a
6 lease within sixty days of receiving a completed application, unless
7 a service provider consents to a different time period.

8 ~~((5))~~ (6) The reasons for a denial of a lease application must
9 be supported by substantial evidence contained in a written record.

10 ~~((6))~~ (7) The department may adopt rules to implement this
11 section.

12 ~~((7))~~ (8) All lease money paid to the department under this
13 section shall be deposited in the motor vehicle fund created in RCW
14 46.68.070.

15 NEW SECTION. **Sec. 7.** A new section is added to chapter 47.04
16 RCW to read as follows:

17 (1) If notice is given to relevant service providers as outlined
18 in RCW 47.04.045 and no providers are ready or able to participate in
19 coordination of the installation of personal wireless service
20 facilities or broadband conduit during road construction projects,
21 the department may enlist its contractors to install facilities or
22 conduit as part of road construction projects in order to:

23 (a) Reduce future traffic impacts to the traveling public on the
24 roadway;

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

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

29 (2)(a) The department may allow nonprofit service providers to
30 use a right-of-way for the installation of broadband infrastructure
31 in rural and unserved areas at no cost to the provider.

32 (b) If the department reaches an agreement with a nonprofit
33 service provider that allows the service provider to install
34 broadband infrastructure at no charge, there must be quantifiable
35 commensurate benefit to the transportation system and motor vehicle
36 users from the use of the broadband conduit, as described in section
37 1(1)(d) of this act.

38 (3) As used in this section:

39 (a) "Broadband conduit" has the same meaning as in RCW 47.04.045.

1 (b) "Broadband infrastructure" has the same meaning as in RCW
2 43.330.530.

3 (c) "Nonprofit service provider" means a service provider no part
4 of the income of which is distributable to its members, directors, or
5 officers.

6 (d) "Rural area" means a county with a population density of
7 fewer than 100 persons per square mile or a county smaller than 225
8 square miles, as determined by the office of financial management and
9 published each year by the department for the period July 1st to June
10 30th.

11 (e) "Unserved areas" has the same meaning as in RCW 43.330.530.

12 **Sec. 8.** RCW 47.04.047 and 2004 c 131 s 2 are each amended to
13 read as follows:

14 Personal wireless service (~~(is a)~~) and broadband service are
15 critical (~~(part)~~) parts of the state's infrastructure. The rapid
16 deployment of personal wireless service facilities (~~(is)~~) and
17 broadband infrastructure are critical to ensure public safety,
18 network access, quality of service, and rural economic development.

19 It is the declared policy of this state to assure that the use of
20 rights-of-way of state highways accommodate the deployment of
21 personal wireless service facilities and broadband infrastructure
22 consistent with highway safety and the preservation of the public
23 investment in state highway facilities.

24 **Sec. 9.** RCW 47.44.081 and 2003 c 244 s 3 are each amended to
25 read as follows:

26 This chapter does not apply to leases issued for the deployment
27 of personal wireless service facilities or broadband infrastructure
28 as provided in RCW 47.04.045.

29 **Sec. 10.** RCW 47.52.001 and 2004 c 131 s 1 are each amended to
30 read as follows:

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

36 (2) Personal wireless service (~~(is a)~~) and broadband service are
37 critical (~~(part)~~) parts of the state's infrastructure. The rapid

1 deployment of personal wireless service facilities (~~is~~) and
2 broadband infrastructure are critical to ensure public safety,
3 network access, quality of service, and rural economic development.
4 (3) It is, therefore, the declared policy of this state to limit
5 access to the highway facilities of this state in the interest of
6 highway safety and for the preservation of the investment of the
7 public in such facilities, and to assure that the use of rights-of-
8 way of limited access facilities accommodate the deployment of
9 personal wireless service facilities and broadband infrastructure
10 consistent with these interests.

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