

HOUSE BILL REPORT

ESSB 5439

As Reported by House Committee On:
Transportation

Title: An act relating to facilitating the coordinated installation of broadband along state highways.

Brief Description: Facilitating the coordinated installation of broadband along state highways.

Sponsors: Senate Committee on Transportation (originally sponsored by Senators Saldaña, Kuderer, Lovelett and Nguyen).

Brief History:

Committee Activity:

Transportation: 3/11/21, 3/31/21 [DPA].

**Brief Summary of Engrossed Substitute Bill
(As Amended By Committee)**

- Makes it the policy of the state that limited access highway rights-of-way be used to accommodate the deployment of broadband facilities as a critical part of the state's infrastructure.
- Requires the Washington State Department of Transportation (WSDOT) to adopt and maintain an agency policy to provide broadband facility owners with information about planned highway projects.
- Authorizes the WSDOT to have its contractors install broadband conduit as part of road construction projects if no owners would like to participate in the installation of broadband infrastructure.
- Authorizes the WSDOT to grant franchises to use a state highway for construction and maintenance of fiber optic facilities.
- Requires the Joint Transportation Committee to oversee a consultant study to provide recommendations related to the WSDOT's role in broadband service expansion efforts, subject to appropriations.

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.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: Do pass as amended. Signed by 28 members: Representatives Fey, Chair; Wylie, 1st Vice Chair; Bronoske, 2nd Vice Chair; Ramos, 2nd Vice Chair; Barkis, Ranking Minority Member; Eslick, Assistant Ranking Minority Member; Robertson, Assistant Ranking Minority Member; Volz, Assistant Ranking Minority Member; Berry, Chapman, Dent, Duerr, Entenman, Goehner, Griffey, Hackney, Klicker, Lovick, Orcutt, Paul, Ramel, Riccelli, Slatter, Sutherland, Taylor, Valdez, Walsh and Wicks.

Minority Report: Without recommendation. Signed by 1 member: Representative McCaslin.

Staff: Jennifer Harris (786-7143).

Background:

Use of State Highways.

The Washington State Department of Transportation (WSDOT) is authorized to grant franchises to persons, associations, private or municipal corporations, or the United States government to use any state highway for the construction and maintenance of facilities including water pipes, telephone, and electric power lines and conduits. The applicant is required to pay reasonable costs to the WSDOT for investigating, handling, and granting the franchise or permit.

An equitable portion of the added costs of design and construction of highway structures are charged to any utility company for new installations and facility relocations, except when the state receives reimbursement from the federal government. The Eighteenth Amendment to the Washington Constitution restricts the use of revenues collected from a tax on the distribution or use of motor vehicle fuel intended to be used for highway purposes. The Washington State Supreme Court has held that the costs of utility facility relocation may not be paid with fuel tax dollars because these expenditures are not exclusively for highway purposes.

Personal Wireless Service Facilities.

The policy of the state is that limited access highway rights-of-way be used to accommodate the deployment of personal wireless service facilities in a manner consistent with the transportation purpose served by limited access highways. Personal wireless service is considered a critical part of the state's infrastructure, and the rapid deployment of personal wireless facilities is considered critical to public safety, network access, quality of service, and rural economic development.

A "limited access facility" is a highway or street especially designed or designated for

through traffic, and over, from, or to which owners or occupants of abutting land, or other persons, have no right or easement, or only a limited right or easement of access, light, air, or view by reason of the fact that their property abuts the limited access facility, or for any other reason to accomplish the purpose of a limited access facility. "Right-of-way" means all state-owned land within a state highway corridor. "Personal wireless service facilities" means unstaffed facilities that are used for the transmission or reception, or both, of personal wireless services including, but not necessarily limited to, antenna arrays, transmission cables, equipment shelters, and support structures.

The WSDOT is required to maintain a process for issuing a lease for the use of right-of-way by a service provider, and must act on an application for a lease within 60 days of its receipt, unless a service provider agrees to a different period of time. The cost of the lease must be limited to the fair market value of the portion of the right-of-way being used by the service provider and the direct administrative expenses incurred by the WSDOT in processing the lease application. If the WSDOT and the service provider are unable to agree on the cost of the lease, the service provider may submit the cost of the lease to binding arbitration by serving written notice on the WSDOT. Costs of the arbitration must be borne equally by the parties and each party is responsible for its own costs and expenses.

Federal Regulations and Broadband Facilities.

In 2018 the federal MOBILE NOW Act became law. It included a number of provisions related to the promotion of broadband, including a requirement that the United States Department of Transportation ensure that states receiving federal-aid highway funds:

1. identify a broadband utility coordinator to facilitate the broadband infrastructure right-of-way efforts within the state;
2. establish a process to register broadband infrastructure entities that seek to be included in those facilitation efforts;
3. establish a process to electronically notify such entities of the state transportation improvement program on an annual basis, and to provide additional notifications as necessary; and
4. coordinate this effort with statewide telecommunication and broadband plans and state and local transportation and land use plans, including strategies to minimize repeated excavations related to the installation of broadband infrastructure in a right-of-way.

"Broadband infrastructure" means any buried, underground, or aerial facility, and any wireless or wireline connection that enables users to send and receive voice, video, data, graphics, or any combination of these.

If a state chooses to provide for the installation of broadband infrastructure in the right-of-way of an applicable federal-aid highway project, the state department of transportation must ensure that any existing broadband entities are not disadvantaged, as compared to other broadband infrastructure entities. This law does not establish a mandate that a state

install or allow the installation of broadband infrastructure in a highway right-of-way.

Draft rules have been issued to implement this federal law, but have not yet been finalized. Once finalized, they will apply to states that receive federal-aid highway funds.

Washington State Broadband Office.

In 2019 the Washington State Broadband Office (SBO) was established in the Department of Commerce (Commerce). The purpose of the SBO is to encourage, foster, develop, and improve affordable, quality broadband within the state. The SBO's responsibilities include:

- serving as the central broadband planning body for the state;
- coordinating with local governments, tribes, public and private entities, nonprofit organizations, and consumer-owned and investor-owned utilities to develop strategies and plans to promote the deployment of broadband infrastructure and greater broadband access, while protecting proprietary information;
- reviewing existing broadband initiatives, policies, and public and private investments;
- developing, recommending, and implementing a statewide plan to encourage cost-effective broadband access, and making recommendations for increased usage, particularly in rural and unserved areas;
- updating the state's broadband goals and definitions for broadband service in unserved areas as technology advances; and
- encouraging public-private partnerships to increase deployment and adoption of broadband services and applications.

In carrying out its purpose, the SBO may collaborate with the Utilities and Transportation Commission, the Office of the Chief Information Officer, Commerce, the Community Economic Revitalization Board, the Public Works Board, the State Librarian, and other relevant state agencies.

State Broadband Goals.

The state's goals for broadband access are that:

- by 2024 all Washington businesses and residences have access to high-speed broadband, which provides minimum download speeds of 25 megabits per second and minimum upload speeds of 3 megabits per second;
- by 2026 all Washington communities have access to at least 1 gigabit per second symmetrical broadband service (with the same speeds in both directions) at anchor institutions, such as schools, hospitals, libraries, and government buildings; and
- by 2028 all Washington business and residences have access to at least one provider of broadband with at least 150 megabits per second symmetrical broadband service.

In 2019 the State Public Works Board, which is composed of 13 members appointed by the Governor, was required to establish a competitive grant and loan program to award funding to eligible applicants to promote the expansion of access to broadband service in unserved

areas of the state, with grants and loans awarded to assist in funding acquisition, installation, and construction of middle-mile and last-mile infrastructure that supports broadband services and to assist in funding strategic planning for deploying broadband service in unserved areas.

Summary of Amended Bill:

State Goals for Highway Infrastructure.

The policy of the state is that limited access highway rights-of-way be used to accommodate the deployment of broadband facilities in a manner consistent with the transportation purpose served by limited access highways. Broadband facilities are considered a critical part of the state's infrastructure, and the rapid deployment of broadband facilities is considered critical to public safety, network access, quality of service, and rural economic development.

In furtherance of the state's policy, the WSDOT is directed to adopt and maintain an agency policy that requires the WSDOT to proactively provide broadband facility owners with information about planned state highway projects to enable collaboration between the WSDOT and the broadband facility owners for the installation of broadband facilities during project work, when possible. This coordination is subject to requirements under state and federal law, including state requirements applicable to utility and wireless service facilities on WSDOT rights-of-way.

Washington State Broadband Office.

The SBO must serve the ongoing and growing needs of the state's transportation systems as part of its broadband-related efforts. It must address barriers to development, adoption, and utilization of broadband service related to project coordination logistics. The SBO may collaborate with the WSDOT in carrying out its purpose. In its biennial report, the SBO must include a summary of its activities coordinating infrastructure development with the WSDOT.

Coordination for Broadband Installation.

The WSDOT must adopt and maintain an agency policy that requires the WSDOT to proactively provide broadband facility owners with information about planned state highway projects to enable collaboration between broadband facility owners and the WSDOT for the installation of broadband facilities.

"Broadband conduit" means conduit used to support broadband infrastructure, including fiber optic cables. "Broadband infrastructure" means networks of deployed telecommunications equipment and technologies necessary to provide high-speed Internet

access and other advanced telecommunications services to end users.

Broadband Installation by the Washington State Department of Transportation.

If no owners would like to participate in the installation of broadband infrastructure during highway project work, the WSDOT may have its contractors install broadband conduit as part of road construction projects to benefit the transportation system.

This broadband conduit may be used to:

- reduce future traffic impacts;
- support vehicle miles traveled reduction and congestion management goals of the state through facilitating telework; and
- prepare the transportation system for the use of autonomous vehicles.

Broadband facility owners must obtain a franchise granted by the WSDOT before installing broadband facilities within the WSDOT's conduit. The costs for installation and maintenance facilities are the responsibility of the broadband facility owner. The WSDOT may adopt rules establishing a fee schedule for the occupancy of broadband facilities within the WSDOT broadband conduit consistent with federal law.

Broadband Installation by Broadband Facility Owners.

The WSDOT is authorized to grant franchises to use a state highway for construction and maintenance of fiber optic facilities.

Joint Transportation Committee Study.

Subject to appropriations for this specific purpose in the Transportation Budget, the Joint Transportation Committee (JTC) must oversee a consultant study that would provide recommendations on the following:

1. a WSDOT strategy, and specific limited access highway corridors, that could be used to address missing fiber connections and inadequate broadband service in parts of the state;
2. planning and financial tools that could provide the state with greater ability to install conduit in anticipation of future broadband fiber occupancy;
3. opportunities for mutually beneficial partnerships between the WSDOT and broadband service providers for broadband for transportation purposes; and
4. strategies for mitigating potential safety, operations, and preservation impacts to transportation related to the recommendations above.

The study must also address the appropriate taxonomy to apply to areas unserved and underserved by broadband to better prioritize broadband needs in the state, as well as when the inclusion of broadband conduit installation is recommended as the most effective means of facilitating broadband access. In addition, the study must consider the most relevant best

practices in other states, and include an examination of state and federal laws and regulations that could impact these recommendations. It is also required to include recommendations for federal actions that could be requested by Washington state legislators, and recommendations for modifications to applicable state laws and regulations.

The JTC is required to consult with the WSDOT, the SBO, and other state agencies and local jurisdictions, as well as public and private utility providers and public and private broadband providers, as necessary, during development of the study's recommendations.

Amended Bill Compared to Engrossed Substitute Bill:

The amended bill authorizes the WSDOT to adopt rules establishing a fee schedule for occupancy of broadband facilities within WSDOT broadband conduit consistent with federal law. It also makes minor modifications to language in the intent section.

The amended bill includes in the stakeholders to be consulted as part of the JTC study public and private utility providers and broadband providers, and requires that the JTC study include in its recommendations:

1. information related to a taxonomy to evaluate unserved and underserved broadband needs;
2. when the inclusion of broadband conduit installation in a transportation project is recommended;
3. the role of the WSDOT in a coordinated approach for broadband development;
4. consideration of the most relevant best practices in other states; and
5. recommendations for federal actions that could be requested by Washington state legislators.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Access to broadband and digital equity has become a priority with remote work and school making it a necessity. Broadband is also an economic opportunity driver. Ensuring broadband needs can be addressed is a part of addressing transportation needs. It frees up right of way so that goods can move to where people are. This is about making sure that people have real choices and real freedom. The future of the transportation system requires more connectivity.

This bill implements several of the Washington State Transportation Commission's recommendations, including encouraging active coordination by the WSDOT and consideration of opportunities to monetize WSDOT broadband conduit. Using highway right of way is an efficient way to accelerate the deployment of broadband, next generation highways, equal access and opportunity, and autonomous vehicles.

The bill is an important step in the right direction to address inequities of access to the Internet and will benefit everyone in the state. Many families, especially in rural areas, do not have robust Internet access. Hotspots and other tools are not sufficient. The bill is reasonable, responsible, and provides for collaboration between governments and industry.

(Opposed) None.

Persons Testifying: Senator Saldaña, prime sponsor; Reema Griffith, Washington State Transportation Commission; Cindy McMullen, Washington State School Directors' Association; and Stephanie Swanberg, Tri-City Regional Chamber of Commerce.

Persons Signed In To Testify But Not Testifying: None.