

SENATE BILL REPORT

ESHB 1457

As of March 16, 2021

Title: An act relating to facilitating the installation of broadband facilities on limited access highways.

Brief Description: Facilitating the installation of broadband facilities on limited access highways.

Sponsors: House Committee on Transportation (originally sponsored by Representatives Wylie, Riccelli, Kloba, Santos, Slatter, Shewmake, Ramel and Hackney).

Brief History: Passed House: 3/8/21, 92-5.

Committee Activity: Transportation: 3/16/21.

Brief Summary of Bill

- Identifies broadband infrastructure as a critical part of the state's infrastructure and allows limited access highway rights-of-way to be used to accommodate its deployment.
- Requires the Washington State Department of Transportation (WSDOT) to adopt and maintain a policy to provide broadband facility owners with information about planned highway projects to facilitate broadband installation coordination.
- Adds a Joint Transportation Committee study to provide recommendations related to WSDOT's role in broadband service expansion efforts, subject to appropriations.

SENATE COMMITTEE ON TRANSPORTATION

Staff: Erica Bramlet (786-7321)

Background: Broadband. Broadband is any service providing advanced

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telecommunications capability and Internet access with certain transmission speeds. There are several transmission technologies, some of which require installing fiber optic technology in conduits, which are often located in public rights-of-way similar to other utility infrastructure.

Highways and Utilities. The Washington State Department of Transportation (WSDOT) issues utility permits and franchises on highway rights-of-way for water, gas, electricity, telephone, and telecommunications at no cost except for recovery of staff labor costs.

If a service provider is granted a permit, franchise, or lease by WSDOT and installs infrastructure in the rights-of-way, whether it be underground, at-grade, above grade, or some combination thereof, it is required to follow WSDOT standards for any trenching, pavement restoration, or traffic control. Service providers are also required to construct and maintain their facilities at their own expense, including relocation if a future WSDOT project requires it. The Washington State Supreme Court held, under the Eighteenth Amendment, that the costs of utility facility relocation may not be paid with fuel tax dollars because these expenditures are not exclusively for highway purposes.

In 2018, the U.S. Secretary of Transportation was directed under the MOBILE NOW Act to issue a regulation, for which rulemaking is still in progress, requiring each state receiving federal-aid highway funds to meet the following requirements:

- identify a broadband utility coordinator to facilitate broadband infrastructure rights-of-way efforts within the state;
- register broadband infrastructure entities that seek to be included in those facilitation efforts;
- establish an electronic process to annually notify broadband infrastructure entities of the state transportation improvement program; and
- coordinate statewide and local telecommunications and land use plans, including strategies to minimize repeated excavations involving the installation of broadband infrastructure in a right-of-way.

Summary of Bill: WSDOT must develop a policy compliant with state and federal laws to provide information to broadband providers about planned limited access highway projects prior to construction so that potential installation of broadband facilities can be coordinated.

Broadband infrastructure is identified as a critical part of the state's infrastructure, and is thus added as one of the reasons for allowing access to limited-access highway rights-of-way. Clarification is added that fiber optic is eligible for WSDOT franchises to use state highway rights-of-way.

Subject to appropriation, the Joint Transportation Committee is directed to oversee a consultant study to provide recommendations on the following by January 1, 2022:

- a WSDOT strategy, and specific highway corridors, that could be used to address

missing or inadequate broadband service in parts of the state, including how to prioritize unserved versus underserved areas and when installation as part of a transportation project might be most effective;

- WSDOT's role in a statewide coordinated broadband development approach;
- planning and financial tools that could provide the state with greater ability to install conduit in anticipation of future broadband fiber occupancy;
- opportunities for mutually beneficial partnerships between WSDOT and broadband service providers for broadband for transportation purposes; and
- strategies for mitigating potential safety, operations, and preservation impacts to transportation related to the above recommendations.

Appropriation: The bill contains a section or sections to limit implementation to the availability of amounts appropriated for that specific purpose.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: With everyone working from home, broadband has become critical soft infrastructure. Incorporating broadband into transportation projects will both help accelerate broadband deployment statewide by filling middle- and last-mile gaps, and benefit the transportation system itself in terms of serving as a platform for next-generation highways. Allowing placement of broadband facilities in highway rights-of-way is a simple but meaningful way to utilize the state's corridors to meet state broadband goals. The JTC study will help get longer-term specific recommendations in terms of removing significant logistical barriers and providing statewide broadband access.

Persons Testifying: PRO: Representative Sharon Wylie, Prime Sponsor; Reema Griffith, Washington State Transportation Commission; Bill Waterfield.

Persons Signed In To Testify But Not Testifying: No one.