118TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPT. 118–713
Part 1

BROADBAND FOR AMERICANS THROUGH RESPONSIBLE STREAMLINING ACT

OCTOBER 22, 2024.—Ordered to be printed

Mr. WESTERMAN, from the Committee on Natural Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 4141]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 4141) to provide that certain communications projects are not subject to requirements to prepare certain environmental or historical preservation reviews, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Broadband for Americans through Responsible Streamlining Act" or the "BARS Act".

SEC. 2. APPLICATION OF NEPA AND NHPA TO CERTAIN COMMUNICATIONS PROJECTS.

(a) IN GENERAL.—

(1) NEPA EXEMPTION.—A Federal authorization with respect to a covered project may not be considered a major Federal action under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(2) NATIONAL HISTORIC PRESERVATION ACT EXEMPTION.—A covered project may not be considered an undertaking under section 300320 of title 54, United States Code.

(b) GRANT OF EASEMENT ON FEDERAL PROPERTY.—

(1) NEPA EXEMPTION.—A Federal authorization with respect to a covered easement for a communications facility may not be considered a major Federal action under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), if—

(A) a covered easement has previously been granted for another communications facility or a utility facility with respect to the same building or other property owned by the Federal Government; or

(B) the covered easement is for a communications facility in a public right-of-way.

(2) NATIONAL HISTORIC PRESERVATION ACT EXEMPTION.—A covered easement for a communications facility may not be considered an undertaking under section 300320 of title 54, United States Code, if—

(A) a covered easement has previously been granted for another communications facility or a utility facility with respect to the same building or other property owned by the Federal Government; or

(B) the covered easement is for a communications facility in a public right-of-way.

(c) REQUESTS FOR MODIFICATION OF CERTAIN EXISTING WIRELESS FACILITIES.—Section 6409(a)(3) of the Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. 1455(a)(3)) is amended to read as follows:

"(3) APPLICATION OF NEPA; NHPA.—

"(A) NEPA EXEMPTION.—A Federal authorization with respect to an eligible facilities request may not be considered a major Federal action under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

"(B) NATIONAL HISTORIC PRESERVATION ACT EXEMPTION.—An eligible facilities request may not be considered an undertaking under section 300320 of title 54, United States Code.

"(C) FEDERAL AUTHORIZATION DEFINED.—In this paragraph, the term 'Federal authorization'—

"(i) means any authorization required under Federal law with respect to an eligible facilities request; and

"(ii) includes any permits, special use authorizations, certifications, opinions, or other approvals as may be required under Federal law with respect to an eligible facilities request.".

SEC. 3. PRESUMPTION WITH RESPECT TO CERTAIN COMPLETE FCC FORMS.

(a) PRESUMPTION.—If an Indian Tribe is shown to have received a complete FCC Form 620 or FCC Form 621 (or any successor form), or can be reasonably expected to have received a complete FCC Form 620 or FCC Form 621 (or any successor form), and has not acted on a request contained in such complete form by the date that is 45 days after the date of such receipt or reasonably expected receipt—

(1) the Commission and a court of competent jurisdiction (as the case may be) shall presume the applicant with respect to such complete form has made a good faith effort to provide the information reasonably necessary for such Indian Tribe to ascertain whether historic properties of religious or cultural significance to such Indian Tribe may be affected by the undertaking related to such complete form; and

(2) such Indian Tribe shall be presumed to have disclaimed interest in such undertaking.

(b) OVERCOMING PRESUMPTION.—

(1) IN GENERAL.—An Indian Tribe may overcome a presumption under subsection (a) upon making, to the Commission or a court of competent jurisdiction, a favorable demonstration with respect to 1 or more of the factors described in paragraph (2).

(2) FACTORS CONSIDERED.—In making a determination regarding a presumption under subsection (a), the Commission or court of competent jurisdiction shall give substantial weight to—

(A) whether the applicant with respect to the relevant complete form failed to make a reasonable attempt to follow up with the applicable Indian Tribe not earlier than 30 days, and not later than 50 days, after the applicant submitted a complete FCC Form 620 or FCC Form 621 (as the case may be) to such Indian Tribe; and

(B) whether the rules of the Commission, or FCC Form 620 or FCC Form 621, are found to be in violation of a Nationwide Programmatic Agreement of the Commission.

SEC. 4. RULE OF CONSTRUCTION.

Nothing in this Act or any amendment made by this Act may be construed to affect the obligation of the Commission to evaluate radiofrequency exposure under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

SEC. 5. DEFINITIONS.

In this Act:

(1) CHIEF EXECUTIVE.—The term "Chief Executive" means the person who is the Chief, Chairman, Governor, President, or similar executive official of an Indian tribal government.

(2) COMMISSION.—The term "Commission" means the Federal Communications Commission.

(3) COMMUNICATIONS FACILITY.—The term "communications facility" has the meaning given the term "communications facility installation" in section 6409(d) of the Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. 1455(d)).

(4) COVERED EASEMENT.—The term "covered easement" means an easement, right-of-way, or lease with respect to a building or other property owned by the Federal Government, excluding Tribal land held in trust by the Federal Government (unless the Indian tribal government with respect to such land requests that the Commission not exclude the land for purposes of this definition), for the right to install, construct, modify, or maintain a communications facility or a utility facility.

(5) COVERED PROJECT.—The term "covered project" means any of the following:

(A) A project—

(i) for—

(I) the mounting or installation of a personal wireless service facility with another personal wireless service facility that exists at the time at which a request for authorization of such mounting or installation is submitted to a State or local government or instrumentality thereof or to an Indian tribal government; or

(II) the modification of a personal wireless service facility; and

(ii) for which a permit, license, or approval from the Commission is required or that is otherwise subject to the jurisdiction of the Commission.

(B) A project—

(i) for the placement, construction, or modification of a telecommunications service facility in or on eligible support infrastructure; and

(ii) for which a permit, license, or approval from the Commission is required or that is otherwise subject to the jurisdiction of the Commission.

(C) A project to deploy a small personal wireless service facility.

(D) A project—

(i) for the deployment or modification of a communications facility that is to be carried out entirely within a floodplain (as defined in section 9.4 of title 44, Code of Federal Regulations, as in effect on the date of the enactment of this Act); and

(ii) for which a permit, license, or approval from the Commission is required or that is otherwise subject to the jurisdiction of the Commission.

(E) A project—

(i) for the deployment or modification of a communications facility that is to be carried out entirely within a brownfield site (as defined in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601)); and

(ii) for which a permit, license, or approval from the Commission is required or that is otherwise subject to the jurisdiction of the Commission.

(F) A project to permanently remove covered communications equipment or services (as defined in section 9 of the Secure and Trusted Communications Networks Act of 2019 (47 U.S.C. 1608)) and to replace such covered communications equipment or services with communications equipment or services (as defined in such section) that are not covered communications equipment or services (as so defined).

(G) A project that—

(i) is to be carried out entirely within an area for which the President, the Governor of a State, or the Chief Executive of an Indian tribal government has declared a major disaster or an emergency;

(ii) is to be carried out not later than 5 years after the date on which the President, Governor, or Chief Executive made such declaration; and

(iii) replaces a communications facility damaged by such disaster or emergency or makes improvements to a communications facility in such area that could reasonably be considered as necessary for recovery from such disaster or emergency or to prevent or mitigate any future disaster or emergency.

(H) A project for the placement and installation of a new communications facility if—

(i) such new facility—

(I) will be located within a public right-of-way; and

(II) is not more than 50 feet tall or 10 feet taller than any existing structure in the public right-of-way, whichever is higher;

(ii) such new facility is—

(I) a replacement for an existing communications facility; and

(II) the same as, or substantially similar to (as such term is defined by the Commission), the existing communications facility that such new communications facility is replacing;

(iii) such new facility is a type of communications facility that—

(I) is described in section 6409(d)(1)(B) of the Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. 1455(d)(1)(B)); and

(II) meets the size limitation of a small antenna established by the Commission; or

(iv) the placement and installation of such new facility involves the expansion of the site of an existing communications facility not more than 30 feet in any direction.

(6) ELIGIBLE SUPPORT INFRASTRUCTURE.—The term "eligible support infrastructure" means infrastructure that supports or houses a facility for communication by wire (or that is designed for or capable of supporting or housing such a facility) at the time when a request to a State or local government or instrumentality thereof, or to an Indian tribal government, for authorization to place, construct, or modify a telecommunications service facility in or on the infrastructure is submitted to the government or instrumentality.

(7) EMERGENCY.—The term "emergency" means—

(A) in the case of an emergency declared by the President, an emergency declared by the President under section 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5191); and

(B) in the case of an emergency declared by the Governor of a State or the Chief Executive of an Indian tribal government, any occasion or instance with respect to which the Governor or Chief Executive declares that an emergency exists (or makes a similar declaration) under State or Tribal law (as the case may be).

(8) FEDERAL AUTHORIZATION.—The term "Federal authorization"—

(A) means any authorization required under Federal law with respect to a covered project or a covered easement; and

(B) includes any permits, special use authorizations, certifications, opinions, or other approvals as may be required under Federal law with respect to a covered project or a covered easement.

(9) GOVERNOR.—The term "Governor" means the chief executive of any State.

(10) INDIAN TRIBAL GOVERNMENT.—The term "Indian tribal government" means the governing body of an Indian Tribe.

(11) INDIAN TRIBE.—The term "Indian Tribe" has the meaning given the term "Indian tribe" under section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5130).

(12) MAJOR DISASTER.—The term "major disaster" means—

(A) in the case of a major disaster declared by the President, a major disaster declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170); and

(B) in the case of a major disaster declared by the Governor of a State or the Chief Executive of an Indian tribal government, any occasion or instance with respect to which the Governor or Chief Executive declares that a disaster exists (or makes a similar declaration) under State or Tribal law (as the case may be).

(13) PERSONAL WIRELESS SERVICE.—The term "personal wireless service" means any fixed or mobile service (other than a broadcasting (as defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153)) service) provided via licensed or unlicensed frequencies, including—

(A) commercial mobile service (as defined in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d)));

(B) commercial mobile data service (as defined in section 6001 of the Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. 1401));

(C) unlicensed wireless service; and

(D) common carrier wireless exchange access service.

(14) PERSONAL WIRELESS SERVICE FACILITY.—The term "personal wireless service facility" means a facility used to provide or support the provision of personal wireless service.

(15) PUBLIC RIGHT-OF-WAY.—The term "public right-of-way"—

(A) means—

(i) the area on, below, or above a public roadway, highway, street, sidewalk, alley, or similar property (whether currently or previously used in such manner); and

(ii) any land immediately adjacent to and contiguous with property described in clause (i) that is within the right-of-way grant; and

(B) does not include a portion of the Interstate System (as such term is defined in section 101(a) of title 23, United States Code).

(16) SMALL PERSONAL WIRELESS SERVICE FACILITY.—The term "small personal wireless service facility" means a personal wireless service facility in which each antenna is not more than 3 cubic feet in volume (excluding a wireline backhaul facility connected to such personal wireless service facility).

(17) STATE.—The term "State" means each State of the United States, the District of Columbia, and each territory or possession of the United States.

(18) TELECOMMUNICATIONS SERVICE.—The term "telecommunications service" has the meaning given such term in section 3 of the Communications Act of 1934 (47 U.S.C. 153).

(19) TELECOMMUNICATIONS SERVICE FACILITY.—The term "telecommunications service facility"—

(A) means a facility that is designed or used to provide or facilitate the provision of any interstate or intrastate telecommunications service; and

(B) includes a facility described in subparagraph (A) that is used to provide other services.

(20) UNLICENSED WIRELESS SERVICE.—The term "unlicensed wireless service"—

(A) means the offering of telecommunications service or information service (as defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153)) using a duly authorized device that does not require an individual license; and

(B) does not include the provision of direct-to-home satellite services (as defined in section 303(v) of the Communications Act of 1934 (47 U.S.C. 303(v))).

(21) UTILITY FACILITY.—The term "utility facility" means any privately, publicly, or cooperatively owned line, facility, or system for producing, transmitting, or distributing power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system, that directly or indirectly serves the public.

(22) WIRELINE BACKHAUL FACILITY.—The term "wireline backhaul facility" means an above-ground or underground wireline facility used to transport communications service or other electronic communications from a small personal wireless service facility or its adjacent network interface device to a communications network.

PURPOSE OF THE LEGISLATION

The purpose of H.R. 4141 is to provide that certain communications projects are not subject to requirements to prepare certain environmental or historical preservation reviews, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

Broadband is an increasingly vital technology for all aspects of modern life. Despite this growing importance, there are roughly 42 million Americans with no access to broadband. This ongoing dilemma, which has come to be known as the "digital divide," is especially pronounced in rural and tribal communities. Roughly 17 percent of Americans in rural communities and 18 percent of Americans living on tribal lands lack access to broadband. The negative impacts of this divide became especially apparent during the COVID–19 pandemic, when Americans were forced to work and participate in school online. In the past, Congress attempted to increase broadband access by spending billions of taxpayer dollars

while failing to address the root cause of broadband deployment delays, cumbersome and inefficient regulations. Most recently, the Infrastructure Investment and Jobs Act (IIJA) included $65 billion for broadband but failed to pair this funding with much needed reforms to the burdensome regulatory process that continues to hamper broadband projects.

Two of the primary impediments to broadband infrastructure deployment are lengthy reviews and permitting application costs created by the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA). On average, it takes 4.5 years to complete environmental reviews. Nearly a third of the cost spent on wireless deployments go directly to federal reviews. Wireless industry representatives have described some of the absurdity of these costly permitting processes by stating: "It can take about an hour or two to install a small cell that's roughly the size of a pizza box on a streetlight or utility pole, but it can take a year or more to get the necessary permits."

Even when planning projects in previously disturbed areas, and utilizing a categorical exclusion, projects can still take too long to begin. A specific example of this was recently recounted during a House Energy and Commerce Committee hearing regarding a rural project to connect consumers via fiber. According to Michael Romano, Executive Vice President of NTCA, the Rural Broadband Association:

> *Although the entire project was in a previously disturbed right-of-way and subject to a NEPA 'Categorical Exclusion' (the most streamlined level of NEPA review), the provider was not granted final approval and release of funds to begin construction for 9 months. This resulted in an even greater delay, however, as the project is in an area of the country where frozen ground prevents construction for approximately 5 months of the year—meaning construction could not commence for another several months thereafter.*

H.R. 4141, introduced by Congressman Fulcher, seeks to streamline the federal permitting process for certain broadband projects. Specifically, H.R. 4141 would exempt deployments over certain previously disturbed lands from NEPA and NHPA reviews. This is narrowly targeted to apply in instances where lands are previously disturbed, such as existing utility rights-of-ways, where environmental impacts would be minimal to non-existent. This bill would also codify a Federal Communications Commission (FCC) action to responsibly expedite and improve the NHPA tribal review process for new wireless towers to determine whether historic properties of religious and cultural significance may be affected. The FCC action established a 45-day process for moving forward with certain projects in instances in which a tribe does not respond after being given the opportunity to review the required FCC forms. In addition to codifying this presumption, it also provides factors that a tribe can use to overcome presumption. This standalone bill mirrors Title III of H.R. 3557, the "American Broadband Deployment Act," which passed out of the House Energy and Commerce Committee on May 24, 2023.

COMMITTEE ACTION

H.R. 4141 was introduced on June 15, 2023, by Rep. Russ Fulcher (R–ID). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Federal Lands. The bill was also referred to the Committee on Energy and Commerce. On June 22, 2023, the Subcommittee on Federal Lands held a hearing on the bill. On July 26, 2023, the Full Natural Resources Committee met to consider the bill. The Subcommittee on Federal Lands was discharged by unanimous consent. Rep. Fulcher (R–ID) offered an amendment in the nature of a substitute designated Fulcher ANS_012. The amendment offered by Rep. Fulcher was adopted by voice vote. Rep. Raul Grijalva (D–AZ) offered an amendment to the amendment in the nature of a substitute designated Grijalva #1. The amendment offered by Rep. Grijalva was withdrawn by unanimous consent. The bill, as amended, was then ordered favorably reported to the House of Representatives by a roll call vote of 22 to 13, as follows:

Committee on Natural Resources
U.S. House of Representatives
118th Congress

Date: July 26, 2023 Roll Call# 1

Meeting on / Amendment on: **On Favorably Reporting, as amended, H.R. 4141 (Rep. Fulcher),** To provide that certain communications projects are not subject to requirements to prepare certain environmental or historical preservation reviews, and for other purposes.

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Westerman, AR, Chairman	X			*Mr. Grijalva, AZ, Ranking*		X	
Mr. Lamborn, CO	X			*Ms. Napolitano, CA*		X	
Mr. Wittman, VA	X			*Mr. Sablan, CNMI*			
Mr. McClintock, CA	X			*Mr. Huffman, CA*			
Mr. Gosar, AZ	X			*Mr. Gallego, AZ*			
Mr. Graves, LA	X			*Mr. Neguse, CO*		X	
Mrs. Radewagen, AS	X			*Mr. Levin, CA*		X	
Mr. LaMalfa, CA				*Ms. Porter, CA*		X	
Mr. Webster, FL	X			*Ms. Leger Fernandez, NM*		X	
Ms. González-Colón, PR				*Ms. Stansbury, NM*		X	
Mr. Fulcher, ID	X			*Mrs. Peltola, AK*	X		
Mr. Stauber, MN	X			*Ms. Ocasio-Cortez, NY*			
Mr. Curtis, UT	X			*Mr. Mullin, CA*			
Mr. Tiffany, WI				*Ms. Hoyle,OR*		X	
Mr. Carl, AL	X			*Ms. Kamlager-Dove, CA*		X	
Mr. Rosendale, MT	X			*Mr. Magaziner, RI*		X	
Mrs. Boebert, CO	X			*Ms. Velázquez, NY*			
Mr. Bentz, OR	X			*Mr. Case, HI*		X	
Ms. Kiggans, VA	X			*Mrs. Dingell, MI*		X	
Mr. Moylan, Guam	X			*Ms. Lee, NV*		X	
Mr. Hunt, TX	X						
Mr. Collins, GA	X						
Ms. Luna, FL							
Mr. Duarte, CA	X						
Ms. Hageman, WY	X						
				TOTAL:	22	13	

HEARINGS

For the purposes of clause 3(c)(6) of House rule XIII, the following hearing was used to develop or consider this measure: hearing by the Subcommittee on Federal Lands held on June 22, 2023.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

- Named the legislation the "Broadband for Americans through Responsible Streamlining (BARS) Act."

Section 2. Application of NEPA and NHPA to certain communications projects

- Exempts several telecommunications-focused projects from review under NEPA and NHPA. These projects include projects to:
  - Co-locate a personal wireless facility on an existing structure or to modify a personal wireless facility.
  - Place, construct, or modify a telecommunications service facility on or in existing infrastructure.
  - Deploy a small personal wireless facility (small cell).
  - Deploy or modify a communications facility carried out entirely within a floodplain.
  - Deploy or modify a communications facility carried out entirely within a brownfield site.
  - Permanently remove equipment or services from vendors posing a national security threat with equipment or services from trusted vendors.
  - Replace a communications facility damaged by a natural disaster or emergency within an area where the President, Governor, or Chief Executive of a Tribe declared a major disaster or an emergency or improve a communications facility in that area as necessary for recovery or to prevent or mitigate future disaster or emergency.
  - Place a communications facility in a right-of-way on federal land where a previous communications facility previously existed, the new facility is a small cell, or the new facility is no more than 50 feet tall or 10 feet taller than an existing structure in the right-of-way.
- Exempts covered easements from review under NEPA and NHPA where there is already a communications or utility facility on that building or property, or where the covered easement is for a communications facility in an existing right-of-way. A covered easement is "an easement, right-of-way, or lease with respect to a building or other property owned by the Federal Government, excluding Tribal land held in trust by the Federal Government (unless the Indian tribal government with respect to such land requests that the Commission not exclude the land for purposes of this definition), for the right to install, construct, modify, or maintain a communications facility or a utility facility."
- Requests to modify an existing wireless tower or base station that does not substantially change the physical dimensions of the tower or base station are exempt from NEPA and NHPA.

Section 3. Presumption with respect to certain complete FCC forms

- Addresses FCC Forms 620 and 621, which provide information reasonably necessary for an Indian tribe or Native Hawaiian Organization to evaluate whether historic properties of religious and cultural significance may be affected by a new wireless facility. Form 620 addresses new towers while Form 621 addresses co-locations.
- Establishes a presumption that an applicant that submitted a complete FCC Form 620/621, but for which the Tribe has not acted on that request within 45 days of receipt, has made a good-faith effort to provide the information reasonably necessary for the Tribe to ascertain whether historic properties of religious or cultural significance to the Tribe may be affected by the undertaking, and that the Tribe has disclaimed interest in the undertaking.
- Establish factors for a Tribe to overcome the presumption. These factors are whether the applicant failed to make a reasonable attempt to follow up with the Tribe between 30 and 50 days after submitting the Form 620/621 and whether the rules of the FCC or Form 620/621 violate a Nationwide Programmatic Agreement of the FCC.

Section 4. Rule of construction

- Specifies that nothing in this Act may be construed to affect the obligation of the FCC to evaluate radiofrequency exposure under NEPA.

Section 5. Definitions

- Defines several terms, including a covered project under this Act.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. *Cost of Legislation and the Congressional Budget Act.* With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

H.R. 4141, BARS Act
As ordered reported by the House Committee on Natural Resources on July 26, 2023

By Fiscal Year, Millions of Dollars	2024	2024-2029	2024-2034
Direct Spending (Outlays)	*	*	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	*	*	0
Spending Subject to Appropriation (Outlays)	*	*	not estimated

Increases *net direct spending* in any of the four consecutive 10-year periods beginning in 2035?	No	Statutory pay-as-you-go procedures apply?	Yes
		Mandate Effects	
Increases *on-budget deficits* in any of the four consecutive 10-year periods beginning in 2035?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	Yes, Under Threshold

* = between zero and $500,000.

H.R. 4141 would exempt federally funded projects to deploy wired and wireless broadband infrastructure from the requirements of the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA). Those laws require that major construction projects financed by the federal government undergo reviews to determine if they would significantly affect the environment or historic properties.

Using information from the Federal Communications Commission (FCC), National Telecommunications and Information Administration (NTIA), and Bureau of Land Management, CBO estimates that the cost to issue and update existing guidance would be insignificant. Any spending would be subject to the availability of appropriated funds. Because the FCC is authorized to collect fees each year sufficient to offset the appropriated costs of its regulatory activities, CBO estimates that the net cost to the FCC would be negligible, assuming appropriation actions consistent with that authority.

CBO expects enacting the bill could change the pace of spending in existing federal broadband deployment programs, such as the Broadband Equity, Access, and Deployment Program or the Tribal Broadband Connectivity Program administered by the NTIA. (Any change in spending under the bill for previously appropriated funds would be classified as direct spending.) CBO is uncertain about the direction and magnitude of those effects.

The Fiscal Responsibility Act (Public Law 118–5), enacted June 3, 2023, generally requires agencies to complete NEPA reviews within two years. If federally funded broadband projects were exempt from that review process, the entities managing those projects might be able to spend funds faster than under current law. Projects would still need to meet the permitting requirements of state and local governments and exempting projects from NEPA review could expose those projects to litigation, which might mitigate some of the effect on spending from waiving NEPA and NHPA reviews. However, because CBO anticipates all major federal broadband projects will be completed by the end of 2033 under current law, any increase in spending early in the budget window

would be offset by a decrease in spending later in the window. Thus, enacting the bill would not increase net direct spending over the 2024–2034 period.

If the FCC increased annual fee collections to offset the costs of implementing provisions in the bill, H.R. 4141 would increase the cost of an existing private-sector mandate on entities required to pay those fees. CBO estimates that the incremental cost of the mandate would be small and would fall well below the annual threshold established in the Unfunded Mandates Reform Act (UMRA) for private-sector mandates ($200 million in 2024, adjusted annually for inflation).

H.R. 4141 contains no intergovernmental mandates as defined in UMRA.

The CBO staff contacts for this estimate are David Hughes (for federal costs) and Erich Dvorak (for mandates). The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

2. *General Performance Goals and Objectives.* As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to provide that certain communications projects are not subject to requirements to prepare certain environmental or historical preservation reviews, and for other purposes.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

UNFUNDED MANDATES REFORM ACT STATEMENT

According to the Congressional Budget Office (CBO), H.R. 4141 would increase the cost of an existing private-sector mandate. CBO, however, estimates that such mandate would fall well below the threshold established in the Unfunded Mandates Reform Act for private-sector mandates.

EXISTING PROGRAMS

Directed Rule Making. This bill does not contain any directed rule makings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169) as relating to other programs.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or

accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

Any preemptive effect of this bill over state, local, or tribal law is intended to be consistent with the bill's purposes and text and the Supremacy Clause of Article VI of the U.S. Constitution.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

MIDDLE CLASS TAX RELIEF AND JOB CREATION ACT OF 2012

* * * * * * *

TITLE VI—PUBLIC SAFETY COMMUNICATIONS AND ELECTROMAGNETIC SPECTRUM AUCTIONS

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Subtitle D—Spectrum Auction Authority

* * * * * * *

SEC. 6409. WIRELESS FACILITIES DEPLOYMENT.

(a) FACILITY MODIFICATIONS.—

(1) IN GENERAL.—Notwithstanding section 704 of the Telecommunications Act of 1996 (Public Law 104-104) or any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.

(2) ELIGIBLE FACILITIES REQUEST.—For purposes of this subsection, the term "eligible facilities request" means any request for modification of an existing wireless tower or base station that involves—

(A) collocation of new transmission equipment;

(B) removal of transmission equipment; or

(C) replacement of transmission equipment.

[(3) APPLICABILITY OF ENVIRONMENTAL LAWS.—Nothing in paragraph (1) shall be construed to relieve the Commission from the requirements of the National Historic Preservation Act or the National Environmental Policy Act of 1969.]

(3) APPLICATION OF NEPA; NHPA.—

(A) NEPA EXEMPTION.—A Federal authorization with respect to an eligible facilities request may not be considered a major Federal action under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(B) NATIONAL HISTORIC PRESERVATION ACT EXEMPTION.—An eligible facilities request may not be considered an undertaking under section 300320 of title 54, United States Code.

(C) FEDERAL AUTHORIZATION DEFINED.—In this paragraph, the term "Federal authorization"—

(i) means any authorization required under Federal law with respect to an eligible facilities request; and

(ii) includes any permits, special use authorizations, certifications, opinions, or other approvals as may be required under Federal law with respect to an eligible facilities request.

(b) FEDERAL EASEMENTS, RIGHTS-OF-WAY, AND LEASES.—

(1) GRANT.—If an executive agency, a State, a political subdivision or agency of a State, or a person, firm, or organization applies for the grant of an easement, right-of-way, or lease to, in, over, or on a building or other property owned by the Federal Government for the right to install, construct, modify, or maintain a communications facility installation, the executive agency having control of the building or other property may grant to the applicant, on behalf of the Federal Government, subject to paragraph (3), an easement, right-of-way, or lease to perform such installation, construction, modification, or maintenance.

(2) APPLICATION.—

(A) IN GENERAL.—The Administrator of General Services shall develop a common form for applications for easements, rights-of-way, and leases under paragraph (1) for all executive agencies that, except as provided in subparagraph (B), shall be used by all executive agencies and applicants with respect to the buildings or other property of each such agency.

(B) EXCEPTION.—The requirement under subparagraph (A) for an executive agency to use the common form developed by the Administrator of General Services shall not apply to an executive agency if the head of an executive agency notifies the Administrator that the executive agency uses a substantially similar application.

(3) TIMELY CONSIDERATION OF APPLICATIONS.—

(A) IN GENERAL.—Not later than 270 days after the date on which an executive agency receives a duly filed application for an easement, right-of-way, or lease under this subsection, the executive agency shall—

(i) grant or deny, on behalf of the Federal Government, the application; and

(ii) notify the applicant of the grant or denial.

(B) EXPLANATION OF DENIAL.—If an executive agency denies an application under subparagraph (A), the executive agency shall notify the applicant in writing, including a clear statement of the reasons for the denial.

(C) APPLICABILITY OF ENVIRONMENTAL LAWS.—Nothing in this paragraph shall be construed to relieve an executive agency of the requirements of division A of subtitle III of title 54, United States Code, or the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(D) POINT OF CONTACT.—Upon receiving an application under subparagraph (A), an executive agency shall designate one or more appropriate individuals within the executive agency to act as a point of contact with the applicant.

(c) MASTER CONTRACTS FOR COMMUNICATIONS FACILITY INSTALLATION SITINGS.—

(1) IN GENERAL.—Notwithstanding section 704 of the Telecommunications Act of 1996 (Public Law 104–104; 110 Stat. 151) or any other provision of law, the Administrator of General Services shall—

(A) develop one or more master contracts that shall govern the placement of communications facility installations on buildings and other property owned by the Federal Government; and

(B) in developing the master contract or contracts, standardize the treatment of the placement of communications facility installations on building rooftops or facades, the placement of communications facility installations on rooftops or inside buildings, the technology used in connection with communications facility installations placed on Federal buildings and other property, and any other key issues the Administrator of General Services considers appropriate.

(2) APPLICABILITY.—The master contract or contracts developed by the Administrator of General Services under paragraph (1) shall apply to all publicly accessible buildings and other property owned by the Federal Government, unless the Administrator of General Services decides that issues with respect to the siting of a communications facility installation on a specific building or other property warrant nonstandard treatment of such building or other property.

(3) APPLICATION.—

(A) IN GENERAL.—The Administrator of General Services shall develop a common form or set of forms for communications facility installation siting applications that, except as provided in subparagraph (B), shall be used by all executive agencies and applicants with respect to the buildings and other property of each such agency.

(B) EXCEPTION.—The requirement under subparagraph (A) for an executive agency to use the common form or set of forms developed by the Administrator of General Services shall not apply to an executive agency if the head of the executive agency notifies the Administrator that the executive agency uses a substantially similar application.

(d) DEFINITIONS.—In this section:

(1) COMMUNICATIONS FACILITY INSTALLATION.—The term "communications facility installation" includes—

(A) any infrastructure, including any transmitting device, tower, or support structure, and any equipment,

switches, wiring, cabling, power sources, shelters, or cabinets, associated with the licensed or permitted unlicensed wireless or wireline transmission of writings, signs, signals, data, images, pictures, and sounds of all kinds; and

(B) any antenna or apparatus that—

(i) is designed for the purpose of emitting radio frequency;

(ii) is designed to be operated, or is operating, from a fixed location pursuant to authorization by the Federal Communications Commission or is using duly authorized devices that do not require individual licenses; and

(iii) is added to a tower, building, or other structure.

(2) EXECUTIVE AGENCY.—The term "executive agency" has the meaning given such term in section 102 of title 40, United States Code.

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DISSENTING VIEWS

H.R. 4141 would exempt certain covered telecommunications projects and covered easements from review under the National Environmental Policy Act[1] (NEPA) and the National Historic Preservation Act[2] (NHPA). The bill is a sweeping end-run around NEPA and NHPA that includes a broad definition of projects intended to cover almost any type of telecommunication project or alteration of existing facilities on land administered by the Bureau of Land Management and U.S. Forest Service.

Additionally, H.R. 4141 would amend section 6409(a)(3) of the Middle-Class Tax Relief and Job Creation Act of 2012[3] to provide a specific exemption for the Federal Communications Commission (FCC). In addition to establishing a unified process for authorizing the siting of telecommunications infrastructure on federal buildings and other property, which includes common application form and fee structures managed by the Administrator of the General Services Administration (GSA), that law required state and local government to approve any modification to existing wireless telecommunications facilities so long as the modification does not change the physical dimension of the project. However, Congress explicitly confirmed that the approval requirement, which was intended to facilitate the national deployment of wireless technology, did not relieve FCC from any necessary requirements of NEPA or NHPA. H.R. 4141 would completely flip that around and explicitly waive the application of both of these critical laws.

Finally, H.R. 4141 would establish a presumption of approval with respect to certain FCC forms required to gain approval for the construction of antennae and other telecommunications infrastructure. One aspect of these forms ensures that the project applicants notify Indian Tribes and Native Hawaiians who may "attach religious and cultural significance to historic properties which may be affected by the undertaking . . . for direct and visual effects."[4] Under the bill, if an Indian Tribe receives a complete FCC Form 620 or FCC Form 621 (or any successor form) or is *expected* to receive such a form, the form is deemed approved by the tribe if the tribe has not acted on a request contained in the form within 45 days. In this scenario, the applicant would be presumed to have made a good faith effort to provide the necessary information, and the tribe is presumed to have disclaimed interest in the undertaking. An Indian Tribe can overcome the presumption by making a favorable demonstration to the FCC or a court of competent jurisdiction based on certain factors, such as the applicant's attempt to

[1] 42 U.S.C. 4332(2)(C).
[2] 54 U.S.C. 300320.
[3] P.L. 112–96.
[4] FCC Form 620 is available to review online: https://transition.fcc.gov/Forms/Form620/620.pdf.

follow up with the tribe and whether the rules of the Commission or FCC forms violate the Nationwide Programmatic Agreement Regarding the Section 106 NHPA Review Process.

H.R. 4141 is another effort by Committee Republicans to weaken environmental and historic preservation laws. We consistently hear from Republicans that project delays are caused by reviews required by NEPA and NHPA, but one of the major drivers of permitting delays is a lack of funding and staffing capacity. Democrats recognize this, which is why we secured over $1 billion in the Inflation Reduction Act to accelerate permitting and environmental reviews. NEPA and NHPA review processes give communities a say in the federal decision-making process to ensure they prioritize the public's interests. The Committee should focus on ensuring that federal land management agencies have the resources they need to properly plan and execute projects, not seek shortcuts and exemptions that short-circuit public participation and environmental review.

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