

115TH CONGRESS
1ST SESSION

S. 604

To allow certain State permitting authority to encourage expansion of broadband service to rural communities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 9, 2017

Mr. HATCH (for himself, Mr. DAINES, and Mrs. FISCHER) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To allow certain State permitting authority to encourage expansion of broadband service to rural communities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Highway Rights-of-
5 Way Permitting Efficiency Act of 2017”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that, as of the date of enactment of
8 this Act—

1 (1) the United States has been the world leader
2 in Internet and telecommunications technology
3 growth, and the people of the United States now rely
4 on broadband connectivity as an increasingly nec-
5 essary part of daily life;

6 (2) broadband services are used by private citi-
7 zens, businesses, public groups, and government
8 agencies throughout the United States to commu-
9 nicate, access information, share cultures, develop
10 technologies, and grow economies nationally and
11 internationally;

12 (3) while wireless and broadband technologies
13 have contributed significantly to progress throughout
14 the United States, lack of broadband deployment to
15 rural communities has put rural parties at a greater
16 disadvantage for economic development; and

17 (4) delays in the permitting process are costly
18 and discouraging to broadband deployment and fur-
19 ther discourage broadband deployment to rural
20 areas.

21 **SEC. 3. DEFINITIONS.**

22 In this Act:

23 (1) BROADBAND PROJECT.—The term
24 “broadband project” means a project under which a
25 broadband provider installs broadband infrastruc-

1 ture, including copper lines or fiber optic lines, on
2 Federal land.

3 (2) BROADBAND PROVIDER.—The term
4 “broadband provider” means a facilities-based pro-
5 vider of broadband capability that enables a user to
6 originate and receive high-quality voice, data, graph-
7 ics, and video telecommunications.

8 (3) OPERATIONAL RIGHT-OF-WAY.—The term
9 “operational right-of-way” means all real property
10 interests (including easements) acquired for the con-
11 struction or operation of a project, including the lo-
12 cations of the roadway, bridges, interchanges, cul-
13 verts, drainage, clear zone, traffic control signage,
14 landscaping, copper and fiber optic lines, utility shel-
15 ters, and broadband infrastructure as installed by
16 broadband providers, and any rest areas with direct
17 access to a controlled access highway or the National
18 Highway System.

19 (4) PROJECT.—The term “project” has the
20 meaning given the term in section 101(a) of title 23,
21 United States Code.

22 (5) SECRETARY CONCERNED.—The term “Sec-
23 retary concerned” means—

1 (A) the Secretary of Agriculture (acting
 2 through the Chief of the Forest Service), with
 3 respect to National Forest System land; and

4 (B) the Secretary of the Interior, with re-
 5 spect to land managed by the Bureau of Land
 6 Management (including land held for the ben-
 7 efit of an Indian tribe).

8 **SEC. 4. STATE PERMITTING AUTHORITY.**

9 (a) IN GENERAL.—The Secretaries concerned shall
 10 jointly establish a program under which any State may
 11 offer, and the Secretary concerned shall agree, to enter
 12 into a memorandum of understanding with the Secretary
 13 concerned to allow for the permitting of broadband within
 14 an operational right-of-way in accordance with this sec-
 15 tion.

16 (b) ASSUMPTION OF RESPONSIBILITIES.—

17 (1) IN GENERAL.—In entering into a memo-
 18 randum of understanding under this section, the
 19 Secretary concerned may assign to the State, and
 20 the State may agree to assume, all or part of the re-
 21 sponsibilities of the Secretary concerned for environ-
 22 mental review, consultation, or other action required
 23 under any Federal environmental law pertaining to
 24 the review or approval of a specific operational right-
 25 of-way broadband project.

1 (2) STATE RESPONSIBILITY.—

2 (A) IN GENERAL.—A State that assumes
3 any responsibility under paragraph (1) shall be
4 subject to the same procedural and substantive
5 requirements as would apply if the responsi-
6 bility were carried out by the Secretary con-
7 cerned.

8 (B) EFFECT OF ASSUMPTION OF RESPON-
9 SIBILITY.—A State that assumes any responsi-
10 bility under paragraph (1) shall be solely re-
11 sponsible and solely liable for carrying out, in
12 lieu of the Secretary concerned, the responsibil-
13 ities assumed under that paragraph until date
14 on which the program is terminated under sub-
15 section (f).

16 (C) ENVIRONMENTAL REVIEW.—A State
17 that assumes any responsibility under para-
18 graph (1) shall comply with the environmental
19 review procedures under part 771 of title 23,
20 Code of Federal Regulations (or successor regu-
21 lations).

22 (3) FEDERAL RESPONSIBILITY.—Any responsi-
23 bility of the Secretary concerned described in para-
24 graph (1) that is not explicitly assumed by the State

1 in the memorandum of understanding shall remain
2 the responsibility of the Secretary concerned.

3 (c) OFFER AND NOTIFICATION.—A State that in-
4 tends to offer to enter into a memorandum of under-
5 standing under this section shall provide to the Secretary
6 concerned notice of the intent of the State not later than
7 90 days before the date on which the State submits a for-
8 mal written offer to the Secretary concerned.

9 (d) MEMORANDUM OF UNDERSTANDING.—A memo-
10 randum of understanding entered into under this section
11 shall—

12 (1) be executed by the Governor or the top-
13 ranking transportation official in the State who is
14 charged with responsibility for highway construction;

15 (2) be for a term not to exceed 10 years;

16 (3) be in such form as the Secretary concerned
17 may prescribe; and

18 (4) provide that the State—

19 (A) agrees to assume all or part of the re-
20 sponsibilities of the Secretary concerned de-
21 scribed in subsection (b)(1);

22 (B) expressly consents, on behalf of the
23 State, to accept the jurisdiction of the Federal
24 courts for the compliance, discharge, and en-

1 enforcement of any responsibility of the Secretary
2 concerned assumed by the State;

3 (C) certifies that State laws (including reg-
4 ulations) are in effect that—

5 (i) authorize the State to take the ac-
6 tions necessary to carry out the respon-
7 sibilities being assumed; and

8 (ii) are comparable to section 552 of
9 title 5, United States Code, including pro-
10 viding that any decision regarding the pub-
11 lic availability of a document under the
12 State laws is reviewable by a court of com-
13 petent jurisdiction;

14 (D) agrees to maintain the financial re-
15 sources necessary to carry out the responsibil-
16 ities being assumed; and

17 (E) agrees to provide to the Secretary con-
18 cerned any information the Secretary concerned
19 considers necessary to ensure that the State is
20 adequately carrying out the responsibilities as-
21 signed to and assumed by the State.

22 (e) LIMITATION.—Nothing in this section permits a
23 State to assume any rulemaking authority of the Secretary
24 concerned under any Federal law.

25 (f) TERMINATION.—

1 (1) TERMINATION BY THE SECRETARY.—The
 2 Secretary concerned may terminate the participation
 3 of any State in the program established under this
 4 section if—

5 (A) the Secretary concerned determines
 6 that the State is not adequately carrying out
 7 the responsibilities assigned to and assumed by
 8 the State;

9 (B) the Secretary concerned provides to
 10 the State—

11 (i) notification of the determination of
 12 noncompliance; and

13 (ii) a period of at least 30 days during
 14 which to take such corrective action as the
 15 Secretary concerned determines is nec-
 16 essary to comply with the applicable agree-
 17 ment; and

18 (C) the State, after the notification and
 19 period provided under subparagraph (B), fails
 20 to take satisfactory corrective action, as deter-
 21 mined by the Secretary concerned.

22 (2) TERMINATION BY THE STATE.—A State
 23 may terminate the participation of the State in the
 24 program established under this section at any time
 25 by providing to the Secretary concerned a notice of

1 intent to terminate by not later than the date that
2 is 90 days before the date of termination.

3 **SEC. 5. CATEGORICAL EXCLUSION FOR PROJECTS WITHIN**
4 **OPERATIONAL RIGHTS-OF-WAY.**

5 The Secretary concerned shall—

6 (1) not later than 180 days after the date of
7 enactment of this Act, designate any project within
8 an existing operational right-of-way as an action cat-
9 egorically excluded from the requirements relating to
10 environmental assessments or environmental impact
11 statements under section 1508.4 of title 40, Code of
12 Federal Regulations, and section 771.117(c) of title
13 23, Code of Federal Regulations (or successor regu-
14 lations); and

15 (2) not later than 150 days after the date of
16 enactment of this Act, promulgate regulations to
17 carry out paragraph (1).

18 **SEC. 6. FEDERAL BROADBAND PERMIT COORDINATION.**

19 (a) DEFINITION OF SECRETARY.—In this section, the
20 term “Secretary” means the Secretary of the Interior.

21 (b) ESTABLISHMENT.—The Secretary shall establish
22 a Federal Permit Streamlining Project in each Bureau of
23 Land Management field office with responsibility for
24 issuing permits for broadband projects.

25 (c) MEMORANDUM OF UNDERSTANDING.—

1 (1) IN GENERAL.—Not later than 90 days after
2 the date of enactment of this Act, the Secretary, in
3 consultation with the National Conference of State
4 Historic Preservation Officers, shall enter into a
5 memorandum of understanding to carry out this sec-
6 tion with—

7 (A) the Secretary of Agriculture;

8 (B) the Administrator of the Environ-
9 mental Protection Agency;

10 (C) the Administrator of the Federal High-
11 way Administration; and

12 (D) the Director of the United States Fish
13 and Wildlife Service.

14 (2) LEAD AGENCY.—As part of the memo-
15 randum of understanding under paragraph (1), the
16 Secretary shall act as the lead agency in issuing a
17 single permit for each broadband project on behalf
18 of all Federal agencies involved in the broadband
19 project.

20 (3) STATE PARTICIPATION.—The Secretary
21 may request that the Governor of any State with one
22 or more broadband projects be a party to the memo-
23 randum of understanding under paragraph (1).

24 (4) DESIGNATION OF QUALIFIED STAFF.—

1 (A) IN GENERAL.—Not later than 30 days
2 after the date of entrance into the memo-
3 randum of understanding under paragraph (1),
4 the head of each Federal agency that is a party
5 to the memorandum of understanding (other
6 than the Secretary) shall, if the head of the
7 Federal agency determines it to be appropriate,
8 designate to each Bureau of Land Management
9 field office an employee of that Federal agency
10 with expertise in regulatory issues relating to
11 that Federal agency, including, as applicable,
12 particular expertise in—

13 (i) planning under the Forest and
14 Rangeland Renewable Resources Planning
15 Act of 1974 (16 U.S.C. 1600 et seq.);

16 (ii) the preparation of analyses under
17 the National Environmental Policy Act of
18 1969 (42 U.S.C. 4321 et seq.);

19 (iii) programs under chapter 1 and
20 chapter 2 of title 23, United States Code;
21 or

22 (iv) consultation and the preparation
23 of biological opinions under section 7 of
24 the Endangered Species Act of 1973 (16
25 U.S.C. 1536).

1 (B) DUTIES.—Each employee designated
2 under subparagraph (A) shall—

3 (i) not later than 90 days after the
4 date of designation, report to the manager
5 of the Bureau of Land Management field
6 office to which the employee is assigned;

7 (ii) be responsible for any issue relat-
8 ing to any broadband project within the ju-
9 risdiction of the field office described in
10 clause (i) under the authority of the Fed-
11 eral agency from which the employee is as-
12 signed;

13 (iii) participate as part of the team of
14 personnel working on one or more pro-
15 posed broadband projects, including plan-
16 ning and environmental analyses; and

17 (iv) serve as the designated point of
18 contact with any applicable State that as-
19 sumes any responsibility under section
20 4(b)(1) relating to any issue described in
21 clause (ii).

22 (d) FUNDING.—This section shall be carried out
23 using such amounts as are necessary from other amounts
24 available that are not otherwise obligated.

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