

Union Calendar No. 679

115TH CONGRESS
2^D SESSION

H. R. 4824

[Report No. 115–881, Part I]

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

IN THE HOUSE OF REPRESENTATIVES

JANUARY 18, 2018

Mr. CURTIS (for himself, Mr. GOSAR, Mr. LAMALFA, Mr. TIPTON, Mr. GIANFORTE, Mr. PEARCE, Mr. BUCK, Mrs. NOEM, and Mr. STEWART) introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

AUGUST 3, 2018

Additional sponsors: Mr. NEWHOUSE, Mr. MEADOWS, Mr. WESTERMAN, and
Mr. LAMBORN

AUGUST 3, 2018

Reported from the Committee on Natural Resources with amendments

[Strike out all after the enacting clause and insert the part printed in *italic*]

AUGUST 3, 2018

Committee on Agriculture discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on January 18, 2018]

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 “Rural Broadband Per-*
5 *mitting Efficiency Act of 2018”.*

6 **SEC. 2. DEFINITIONS.**

7 *In this Act:*

8 (1) **BROADBAND PROJECT.**—*The term*
9 *“broadband project” means an installation by a*
10 *broadband provider of wireless or broadband infra-*
11 *structure, including but not limited to, copper lines,*
12 *fiber optic lines, communications towers, buildings, or*
13 *other improvements on Federal land.*

14 (2) **BROADBAND PROVIDER.**—*The term*
15 *“broadband provider” means a provider of wireless or*
16 *broadband infrastructure that enables a user to origi-*
17 *nate and receive high-quality voice, data, graphics,*
18 *and video telecommunications.*

19 (3) **INDIAN LANDS.**—*The term “Indian Lands”*
20 *means—*

21 (A) *any land owned by an Indian Tribe, lo-*
22 *cated within the boundaries of an Indian res-*
23 *ervation, pueblo, or rancheria; or*

1 (B) any land located within the boundaries
2 of an Indian reservation, pueblo, or rancheria,
3 the title to which is held—

4 (i) in trust by the United States for the
5 benefit of an Indian Tribe or an individual
6 Indian;

7 (ii) by an Indian Tribe or an indi-
8 vidual Indian, subject to restriction against
9 alienation under laws of the United States;

10 or

11 (iii) by a dependent Indian commu-
12 nity.

13 (4) *INDIAN TRIBE.*—The term “Indian Tribe”
14 means a federally recognized Indian Tribe.

15 (5) *OPERATIONAL RIGHT-OF-WAY.*—The term
16 “operational right-of-way” means all real property
17 interests (including easements) acquired for the con-
18 struction or operation of a project, including the loca-
19 tions of the roadway, bridges, interchanges, culverts,
20 drainage, clear zone, traffic control signage, land-
21 scaping, copper and fiber optic lines, utility shelters,
22 and broadband infrastructure as installed by
23 broadband providers, and any rest areas with direct
24 access to a controlled access highway or the National
25 Highway System.

1 (6) *SECRETARY CONCERNED.*—*The term “Sec-*
2 *retary concerned” means—*

3 (A) *the Secretary of Agriculture (acting*
4 *through the Chief of the Forest Service), with re-*
5 *spect to National Forest System land; and*

6 (B) *the Secretary of the Interior, with re-*
7 *spect to land managed by the Department of the*
8 *Interior (including land held in trust for an In-*
9 *Indian Tribe).*

10 **SEC. 3. STATE OR TRIBAL PERMITTING AUTHORITY.**

11 (a) *IN GENERAL.*—*The Secretary concerned shall es-*
12 *tablish (or in the case where both Department of the Interior*
13 *and National Forest System land would be affected, shall*
14 *jointly establish) a voluntary program under which any*
15 *State or Indian Tribe may offer, and the Secretary con-*
16 *cerned may agree, to enter into a memorandum of under-*
17 *standing to allow for the State or Indian Tribe to prepare*
18 *environmental analyses required under the National Envi-*
19 *ronmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for*
20 *the permitting of broadband projects within an operational*
21 *right-of-way on National Forest System land, land man-*
22 *aged by the Department of the Interior, and Indian Lands.*
23 *Under such a memorandum of understanding, an Indian*
24 *Tribe or State may volunteer to cooperate with the signato-*
25 *ries to the memorandum in the preparation of the analyses*

1 *required under the National Environmental Policy Act of*
2 *1969.*

3 *(b) ASSUMPTION OF RESPONSIBILITIES.—*

4 *(1) IN GENERAL.—In entering into a memo-*
5 *randum of understanding under this section, the Sec-*
6 *retary concerned may assign to the State or Indian*
7 *Tribe, and the State or Indian Tribe may agree to as-*
8 *sume, all or part of the responsibilities of the Sec-*
9 *retary concerned for environmental analyses under*
10 *the National Environmental Policy Act of 1969 (42*
11 *U.S.C. 4321 et seq.).*

12 *(2) STATE OR INDIAN TRIBE RESPONSIBILITY.—*

13 *(A) IN GENERAL.—A State or Indian Tribe*
14 *that assumes any responsibility under para-*
15 *graph (1) shall be subject to the same procedural*
16 *and substantive requirements as would apply if*
17 *the responsibility were carried out by the Sec-*
18 *retary concerned.*

19 *(B) EFFECT OF ASSUMPTION OF RESPONSI-*
20 *BILITY.—A State or Indian Tribe that assumes*
21 *any responsibility, including financial responsi-*
22 *bility, under paragraph (1) shall be solely re-*
23 *sponsible and solely liable for carrying out, in*
24 *lieu of the Secretary concerned, the responsibil-*
25 *ities assumed under that paragraph until the*

1 *date on which the program is terminated under*
2 *subsection (g).*

3 (C) *ENVIRONMENTAL REVIEW.*—*A State or*
4 *Indian Tribe that assumes any responsibility*
5 *under paragraph (1) shall comply with the envi-*
6 *ronmental review procedures under parts 1500–*
7 *1508 of title 40, Code of Federal Regulations (or*
8 *successor regulations), and the regulations of the*
9 *Secretary concerned.*

10 (3) *FEDERAL RESPONSIBILITY.*—*Any responsi-*
11 *bility of the Secretary concerned described in para-*
12 *graph (1) that is not explicitly assumed by the State*
13 *or Indian Tribe in the memorandum of under-*
14 *standing shall remain the responsibility of the Sec-*
15 *retary concerned.*

16 (c) *OFFER AND NOTIFICATION.*—*A State or Indian*
17 *Tribe that intends to offer to enter into a memorandum of*
18 *understanding under this section shall provide to the Sec-*
19 *retary concerned notice of the intent of the State or Indian*
20 *Tribe not later than 90 days before the date on which the*
21 *State or Indian Tribe submits a formal written offer to the*
22 *Secretary concerned.*

23 (d) *TRIBAL CONSULTATION.*—*Within 90 days of enter-*
24 *ing into any memorandum of understanding with a State,*

1 *the Secretary concerned shall initiate consultation with rel-*
2 *evant Indian Tribes.*

3 (e) *MEMORANDUM OF UNDERSTANDING.—A memo-*
4 *randum of understanding entered into under this section*
5 *shall—*

6 (1) *be executed by the Governor or the Governor’s*
7 *designee, or in the case of an Indian Tribe, by an of-*
8 *ficer designated by the governing body of the Indian*
9 *Tribe;*

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

11 (3) *be in such form as the Secretary concerned*
12 *may prescribe;*

13 (4) *provide that the State or Indian Tribe—*

14 (A) *agrees to assume all or part of the re-*
15 *sponsibilities of the Secretary concerned de-*
16 *scribed in subsection (b)(1);*

17 (B) *expressly consents, including through*
18 *the adoption of express waivers of sovereign im-*
19 *munity, on behalf of the State or Indian Tribe,*
20 *to accept the jurisdiction of the Federal courts*
21 *for the compliance, discharge, and enforcement of*
22 *any responsibility of the Secretary concerned as-*
23 *sumed by the State or Indian Tribe;*

24 (C) *certify that State laws and regulations,*
25 *with respect to States, or Tribal laws and regu-*

1 *lations, with respect to Indian Tribes, are in ef-*
2 *fect that—*

3 *(i) authorize the State or Indian Tribe*
4 *to take the actions necessary to carry out*
5 *the responsibilities being assumed; and*

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

12 *(D) agrees to maintain the financial re-*
13 *sources necessary to carry out the responsibilities*
14 *being assumed;*

15 *(E) agrees to provide to the Secretary con-*
16 *cerned any information the Secretary concerned*
17 *considers necessary to ensure that the State or*
18 *Indian Tribe is adequately carrying out the re-*
19 *sponsibilities assigned to and assumed by the*
20 *State or Indian Tribe;*

21 *(F) agrees to return revenues generated*
22 *from the use of public lands authorized under*
23 *this section to the United States annually, in ac-*
24 *cordance with the Federal Land Policy Manage-*
25 *ment Act of 1976 (43 U.S.C. 1701 et seq.); and*

1 (G) agrees to send a copy of all authorizing
2 documents to the United States for proper nota-
3 tion and recordkeeping;

4 (5) prioritize and expedite any analyses under
5 the National Environmental Policy Act of 1969 (42
6 U.S.C. 4321 *et seq.*) under the memorandum of un-
7 derstanding;

8 (6) not be granted to a State on Indian Lands
9 without the consent of the relevant Indian Tribe; and

10 (7) not be granted to an Indian Tribe on State
11 lands without the consent of the relevant State.

12 (f) *LIMITATION.*—Nothing in this section permits a
13 State or Indian Tribe to assume—

14 (1) any rulemaking authority of the Secretary
15 concerned under any Federal law; and

16 (2) Federal Government responsibilities for gov-
17 ernment-to-government consultation with Indian
18 Tribes.

19 (g) *TERMINATION.*—

20 (1) *TERMINATION BY THE SECRETARY.*—The
21 Secretary concerned may terminate the participation
22 of any State or Indian Tribe in the program estab-
23 lished under this section if—

24 (A) the Secretary concerned determines that
25 the State or Indian Tribe is not adequately car-

1 *rying out the responsibilities assigned to and as-*
2 *sumed by the State or Indian Tribe;*

3 *(B) the Secretary concerned provides to the*
4 *State or Indian Tribe—*

5 *(i) notification of the determination of*
6 *noncompliance; and*

7 *(ii) a period of at least 30 days during*
8 *which to take such corrective action as the*
9 *Secretary concerned determines is necessary*
10 *to comply with the applicable agreement;*
11 *and*

12 *(C) the State or Indian Tribe, after the no-*
13 *tification and period provided under subpara-*
14 *graph (B), fails to take satisfactory corrective ac-*
15 *tion, as determined by the Secretary concerned.*

16 *(2) TERMINATION BY THE STATE OR INDIAN*
17 *TRIBE.—A State or Indian Tribe may terminate the*
18 *participation of the State or Indian Tribe in the pro-*
19 *gram established under this section at any time by*
20 *providing to the Secretary concerned a notice of in-*
21 *tent to terminate by not later than the date that is*
22 *90 days before the date of termination.*

23 *(3) TERMINATION OF MEMORANDUM OF UNDER-*
24 *STANDING WITH STATE OR INDIAN TRIBE.—A State or*
25 *an Indian Tribe may terminate a joint memorandum*

1 *of understanding under this section at any time by*
2 *providing to the Secretary concerned a notice of in-*
3 *tent to terminate by no later than the date that is 90*
4 *days before the date of termination.*

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

7 *(a) CATEGORICAL EXCLUSION ESTABLISHED.—*
8 *Broadband projects carried out in an operational right-of-*
9 *way are a category of actions hereby designated as being*
10 *categorically excluded from the preparation of an environ-*
11 *mental assessment or an environmental impact statement*
12 *under section 102 of the National Environmental Policy*
13 *Act of 1969 (42 U.S.C. 4332).*

14 *(b) AVAILABILITY OF CATEGORICAL EXCLUSION.—On*
15 *and after the date of the enactment of this Act, the Secretary*
16 *concerned may use the categorical exclusion established*
17 *under subsection (a) in accordance with this section.*

18 **SEC. 5. FEDERAL BROADBAND PERMIT COORDINATION.**

19 *(a) ESTABLISHMENT.—The Secretary concerned shall*
20 *establish a broadband permit streamlining team comprised*
21 *of qualified staff under subsection (b)(4) in each State or*
22 *regional office that has been delegated responsibility for*
23 *issuing permits for broadband projects.*

24 *(b) MEMORANDUM OF UNDERSTANDING.—*

1 (1) *IN GENERAL.*—Not later than 90 days after
2 the date of enactment of this Act, the Secretary con-
3 cerned, in consultation with the National Conference
4 of State Historic Preservation Officers and the Na-
5 tional Tribal Historic Preservation Officers Associa-
6 tion, shall enter into a memorandum of under-
7 standing to carry out this section with—

8 (A) the Secretary of Agriculture or of the
9 Interior, as appropriate;

10 (B) the Director of the Bureau of Indian
11 Affairs; and

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

14 (2) *PURPOSE.*—The purpose of the memorandum
15 of understanding under paragraph (1) is to coordi-
16 nate and expedite permitting decisions for broadband
17 projects.

18 (3) *STATE OR TRIBAL PARTICIPATION.*—The Sec-
19 retary concerned may request that the Governor of
20 any State or the officer designated by the governing
21 body of the Indian Tribe with one or more broadband
22 projects be a party to the memorandum of under-
23 standing 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 memorandum
3 of understanding under paragraph (1), the head
4 of each Federal agency that is a party to the
5 memorandum of understanding (other than the
6 Secretary concerned) may, if the head of the Fed-
7 eral agency determines it to be appropriate, des-
8 ignate to each State or regional office an em-
9 ployee of that Federal agency with expertise in
10 regulatory issues relating to that Federal agency,
11 including, as applicable, particular expertise
12 in—

13 (i) *planning under the Forest and*
14 *Rangeland Renewable Resources Planning*
15 *Act of 1974 (16 U.S.C. 1600 et seq.) and*
16 *planning under the Federal Land Policy*
17 *Management Act of 1976 (43 U.S.C. 1701 et*
18 *seq.);*

19 (ii) *the preparation of analyses under*
20 *the National Environmental Policy Act of*
21 *1969 (42 U.S.C. 4321 et seq.); or*

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

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

3 (i) *be responsible for any issue relating*
4 *to any broadband project within the juris-*
5 *isdiction of the State or regional office under*
6 *the authority of the Federal agency from*
7 *which the employee is assigned;*

8 (ii) *participate as part of the team of*
9 *personnel working on one or more proposed*
10 *broadband projects, including planning and*
11 *environmental analyses; and*

12 (iii) *serve as the designated point of*
13 *contact with any applicable State or Indian*
14 *Tribe that assumes any responsibility under*
15 *section 3(b)(1) relating to any issue de-*
16 *scribed in clause (i).*

Amend the title so as to read: “A bill to allow certain State and tribal permitting authority to encourage expansion of broadband service to rural and tribal communities, and for other purposes.”.

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115TH CONGRESS
2^D SESSION

H. R. 4824

[Report No. 115-881, Part I]

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

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Reported from the Committee on Natural Resources with amendments

August 3, 2018

Committee on Agriculture discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed