

115TH CONGRESS
1ST SESSION

S. 1478

To improve the Defense Siting Clearinghouse.

IN THE SENATE OF THE UNITED STATES

JUNE 29, 2017

Mr. CORNYN (for himself and Mr. INHOFE) introduced the following bill;
which was read twice and referred to the Committee on Armed Services

A BILL

To improve the Defense Siting Clearinghouse.

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 “Defense Siting Clear-
5 inghouse Improvement Act of 2017”.

6 **SEC. 2. DEFENSE SITING CLEARINGHOUSE.**

7 (a) CODIFICATION.—Chapter 7 of title 10, United
8 States Code, is amended by inserting after section 183 the
9 following new section:

1 **“§ 183a. Defense Siting Clearinghouse for review of**
2 **mission obstructions**

3 “(a) ESTABLISHMENT.—(1) The Secretary of De-
4 fense shall establish a Defense Siting Clearinghouse (in
5 this section referred to as the ‘Clearinghouse’).

6 “(2) The Clearinghouse shall be—

7 “(A) organized under the authority, direction,
8 and control of an Assistant Secretary of Defense
9 designated by the Secretary; and

10 “(B) assigned such personnel and resources as
11 the Secretary considers appropriate to carry out this
12 section.

13 “(b) FUNCTIONS.—(1) The Clearinghouse shall serve
14 as a clearinghouse to coordinate Department of Defense
15 review of applications for energy projects filed with the
16 Secretary of Transportation pursuant to section 44718 of
17 title 49 and received by the Department of Defense from
18 the Secretary of Transportation.

19 “(2) The Clearinghouse shall accelerate the develop-
20 ment of planning tools necessary to determine the accept-
21 ability to the Department of Defense of proposals included
22 in an application for an energy project submitted pursuant
23 to such section.

24 “(3) The Clearinghouse shall perform such other
25 functions as the Secretary of Defense assigns.

1 “(c) REVIEW OF PROPOSED ACTIONS.—(1) Not later
2 than 30 days after receiving from the Secretary of Trans-
3 portation a proper application for an energy project under
4 section 44718 of title 49 that may have an adverse impact
5 on military operations and readiness, the Clearinghouse
6 shall conduct a preliminary review of such application. The
7 review shall—

8 “(A) assess the likely scope, duration, and level
9 of risk of any adverse impact of such energy project
10 on military operations and readiness; and

11 “(B) identify any feasible and affordable ac-
12 tions that could be taken by the Department, the de-
13 veloper of such energy project, or others to mitigate
14 the adverse impact and to minimize risks to national
15 security while allowing the energy project to proceed
16 with development.

17 “(2) If the Clearinghouse determines under para-
18 graph (1) that an energy project will have an adverse im-
19 pact on military operations and readiness, the Secretary
20 of Defense shall issue to the applicant a notice of pre-
21 sumed risk that describes the concerns identified by the
22 Department in the preliminary review and requests a dis-
23 cussion of possible mitigation actions.

24 “(3) The Clearinghouse shall develop, in coordination
25 with other departments and agencies of the Federal Gov-

1 ernment, an integrated review process to ensure timely no-
2 tification and consideration of energy projects filed with
3 the Secretary of Transportation pursuant to section 44718
4 of title 49 that may have an adverse impact on military
5 operations and readiness.

6 “(4) The Clearinghouse shall establish procedures for
7 the Department of Defense for the coordinated consider-
8 ation of and response to a request for a review received
9 from another Federal agency, a State government, an In-
10 dian tribal government, a local government, a landowner,
11 or the developer of an energy project, including guidance
12 to personnel at each military installation in the United
13 States on how to initiate such procedures and ensure a
14 coordinated Department response.

15 “(5) The Clearinghouse shall develop procedures for
16 conducting early outreach to parties carrying out energy
17 projects that could have an adverse impact on military op-
18 erations and readiness and to clearly communicate to such
19 parties actions being taken by the Department of Defense
20 under this section.

21 “(d) COMPREHENSIVE REVIEW.—(1) The Secretary
22 of Defense shall develop a comprehensive strategy for ad-
23 dressing the military impacts of projects filed with the
24 Secretary of Transportation pursuant to section 44718 of
25 title 49.

1 “(2) In developing the strategy required by para-
2 graph (1), the Secretary shall—

3 “(A) assess of the magnitude of interference
4 posed by projects filed with the Secretary of Trans-
5 portation pursuant to section 44718 of title 49;

6 “(B) for the purpose of informing preliminary
7 reviews under subsection (c)(1) and early outreach
8 efforts under subsection (c)(5), identify geographic
9 areas selected as proposed locations for projects
10 filed, or which may be filed in the future, with the
11 Secretary of Transportation pursuant to section
12 44718 of title 49 where such projects could have an
13 adverse impact on military operations and readiness
14 and categorize the risk of adverse impact in such
15 areas; and

16 “(C) specifically identify feasible and affordable
17 long-term actions that may be taken to mitigate ad-
18 verse impacts of projects filed, or which may be filed
19 in the future, with the Secretary of Transportation
20 pursuant to section 44718 of title 49, on military
21 operations and readiness, including—

22 “(i) investment priorities of the Depart-
23 ment of Defense with respect to research and
24 development;

1 “(ii) modifications to military operations to
2 accommodate applications for such projects;

3 “(iii) recommended upgrades or modifica-
4 tions to existing systems or procedures by the
5 Department of Defense;

6 “(iv) acquisition of new systems by the De-
7 partment and other departments and agencies
8 of the Federal Government and timelines for
9 fielding such new systems; and

10 “(v) modifications to the projects for which
11 such applications are filed, including changes in
12 size, location, or technology.

13 “(e) DEPARTMENT OF DEFENSE DETERMINATION
14 OF UNACCEPTABLE RISK.—(1) The Secretary of Defense
15 may not object to an energy project filed with the Sec-
16 retary of Transportation pursuant to section 44718 of title
17 49, except in a case in which the Secretary of Defense
18 determines, after giving full consideration to mitigation
19 actions identified pursuant to this section, that such
20 project would result in an unacceptable risk to the na-
21 tional security of the United States. Such a determination
22 shall constitute a finding pursuant to section 44718(f) of
23 title 49.

24 “(2) Not later than 30 days after making a deter-
25 mination of unacceptable risk under paragraph (1), the

1 Secretary of Defense shall submit to the congressional de-
2 fense committees a report on such determination and the
3 basis for such determination. Such report shall include an
4 explanation of the operational impact that led to the deter-
5 mination, a discussion of the mitigation options consid-
6 ered, and an explanation of why the mitigation options
7 were not feasible or did not resolve the conflict. The Sec-
8 retary of Defense may provide public notice through the
9 Federal Register of the determination.

10 “(3) The Secretary of Defense may only delegate the
11 responsibility for making a determination of unacceptable
12 risk under paragraph (1) to the Deputy Secretary of De-
13 fense, an under secretary of defense, or a principal deputy
14 under secretary of defense.

15 “(f) AUTHORITY TO ACCEPT CONTRIBUTIONS OF
16 FUNDS.—The Secretary of Defense is authorized to re-
17 quest and accept a voluntary contribution of funds from
18 an applicant for a project filed with the Secretary of
19 Transportation pursuant to section 44718 of title 49.
20 Amounts so accepted shall remain available until expended
21 for the purpose of offsetting the cost of measures under-
22 taken by the Secretary of Defense to mitigate adverse im-
23 pacts of such a project on military operations and readi-
24 ness or to conduct studies of potential measures to miti-
25 gate such impacts.

1 “(g) EFFECT OF DEPARTMENT OF DEFENSE HAZ-
 2 ARD ASSESSMENT.—An action taken pursuant to this sec-
 3 tion shall not be considered to be a substitute for any as-
 4 sessment or determination required of the Secretary of
 5 Transportation under section 44718 of title 49.

6 “(h) SAVINGS CLAUSE.—Nothing in this section shall
 7 be construed to affect or limit the application of, or any
 8 obligation to comply with, any environmental law, includ-
 9 ing the National Environmental Policy Act of 1969 (42
 10 U.S.C. 4321 et seq.).

11 “(i) DEFINITIONS.—In this section:

12 “(1) The term ‘adverse impact on military oper-
 13 ations and readiness’ means any adverse impact
 14 upon military operations and readiness, including
 15 flight operations, research, development, testing, and
 16 evaluation, and training, that is demonstrable and is
 17 likely to impair or degrade the ability of the armed
 18 forces to perform their warfighting missions.

19 “(2) The term ‘energy project’ means a project
 20 that provides for the generation or transmission of
 21 electrical energy.

22 “(3) The term ‘landowner’ means a person that
 23 owns a fee interest in real property on which a pro-
 24 posed energy project is planned to be located.

1 “(4) The term ‘military installation’ has the
2 meaning given that term in section 2801(c)(4) of
3 this title.

4 “(5) The term ‘military readiness’ includes any
5 training or operation that could be related to combat
6 readiness, including testing and evaluation activities.

7 “(6) The term ‘military training route’ means a
8 training route developed as part of the Military
9 Training Route Program, carried out jointly by the
10 Federal Aviation Administration and the Secretary
11 of Defense, for use by the armed forces for the pur-
12 pose of conducting low-altitude, high-speed military
13 training.

14 “(7) The term ‘unacceptable risk to the na-
15 tional security of the United States’ means the con-
16 struction, alteration, establishment, or expansion, or
17 the proposed construction, alteration, establishment,
18 or expansion, of a structure or sanitary landfill that
19 would—

20 “(A) endanger safety in air commerce, re-
21 lated to the activities of the Department of De-
22 fense;

23 “(B) interfere with the efficient use and
24 preservation of the navigable airspace and of
25 airport traffic capacity at public-use airports,

1 related to the activities of the Department of
2 Defense; or

3 “(C) significantly impair or degrade the
4 capability of the Department of Defense to con-
5 duct training, research, development, testing,
6 and evaluation, and operations or to maintain
7 military readiness.”.

8 (b) CONFORMING AND CLERICAL AMENDMENTS.—

9 (1) REPEAL OF EXISTING PROVISION.—Section
10 358 of the Ike Skelton National Defense Authoriza-
11 tion Act for Fiscal Year 2011 (49 U.S.C. 44718
12 note) is repealed.

13 (2) REFERENCE TO REGULATIONS.—Section
14 44718(g) of title 49, United States Code, is amend-
15 ed by striking “211.3 of title 32, Code of Federal
16 Regulations, as in effect on January 6, 2014” both
17 places it appears and inserting “183a(i) of title 10”.

18 (3) TABLE OF SECTIONS AMENDMENT.—The
19 table of sections at the beginning of chapter 7 of
20 title 10 is amended by inserting after the item relat-
21 ing to section 183 the following new item:

“183a. Defense Siting Clearinghouse for review of mission obstructions.”.

22 (c) APPLICABILITY OF EXISTING RULES AND REGU-
23 LATIONS.—Notwithstanding the amendments made by
24 subsection (a), any rule or regulation promulgated to carry
25 out section 358 of the Ike Skelton National Defense Au-

1 thorization Act for Fiscal Year 2011 (49 U.S.C. 44718
2 note) that is in effect on the day before the date of the
3 enactment of this Act shall continue in effect and apply
4 to the extent such rule or regulation is consistent with the
5 authority under section 183a of title 10, United States
6 Code, as added by subsection (a), until such rule or regu-
7 lation is otherwise amended or repealed.

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