

118TH CONGRESS
1ST SESSION

S. 2855

To modernize and streamline the permitting process for broadband infrastructure on Federal land, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 20, 2023

Mr. BARRASSO (for himself and Ms. SINEMA) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To modernize and streamline the permitting process for broadband infrastructure on Federal land, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Closing Long Overdue Streamlining Encumbrances To
6 Help Expeditiously Generate Approved Permits Act” or
7 the “CLOSE THE GAP Act”.

8 (b) TABLE OF CONTENTS.—The table of contents for
9 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Promulgation of regulations for streamlining purposes.
- Sec. 4. Online tracking of application progress.
- Sec. 5. Improving public safety on Federal land.
- Sec. 6. Previously disturbed rights-of-way exemption.
- Sec. 7. Wireless facility modifications.
- Sec. 8. Establishment of online portals.
- Sec. 9. Collection and retention of cost recovery fees.
- Sec. 10. Federal Land Management Agency Working Group.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) COMMUNICATIONS FACILITY.—The term
4 “communications facility” includes—

5 (A) any infrastructure, including any
6 transmitting device, tower, or support structure,
7 and any equipment, switches, wiring, cabling,
8 power sources, shelters, or cabinets, associated
9 with the licensed or permitted unlicensed wire-
10 less or wireline transmission of writings, signs,
11 signals, data, images, pictures, and sounds of
12 all kinds; and

13 (B) any antenna or apparatus that—

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

16 (ii)(I) is designed to be operated, or is
17 operating, from a fixed location pursuant
18 to authorization by the Federal Commu-
19 nications Commission; or

1 (II) is using duly authorized devices
2 that do not require individual licenses; and
3 (iii) is added to a tower, building,
4 pole, cable, or other structure.

5 (2) COMMUNICATIONS SITE.—The term “com-
6 munications site” means an area of Federal land
7 available for communications use.

8 (3) COMMUNICATIONS USE.—

9 (A) IN GENERAL.—The term “communica-
10 tions use” means the placement or operation of
11 infrastructure for wireline or wireless tele-
12 communications, including cable television, tele-
13 vision, and radio communications, regardless of
14 whether the placement or operation is pursuant
15 to a license issued by the Federal Communica-
16 tions Commission or on an unlicensed basis in
17 accordance with the regulations of the Federal
18 Communications Commission.

19 (B) INCLUSIONS.—The term “communica-
20 tions use” includes any ancillary activities, uses,
21 or facilities directly related to the placement or
22 operation of infrastructure for wireline or wire-
23 less telecommunications.

24 (4) COMMUNICATIONS USE AUTHORIZATION.—
25 The term “communications use authorization”

1 means a right-of-way, permit, or lease granted,
2 issued, or executed by a Federal land management
3 agency for the primary purpose of authorizing the
4 occupancy and use of Federal land for the construc-
5 tion, placement, and operation of a communications
6 facility.

7 (5) COST RECOVERY FEE.—The term “cost re-
8 covery fee” means any fee collected by a Federal
9 land management agency related to—

10 (A) an application for a communications
11 use authorization; or

12 (B) the occupancy and use authorized by a
13 communications use authorization pursuant to
14 and consistent with authorizing law.

15 (6) COVERED LAND.—The term “covered land”
16 means land managed by the Secretary concerned.

17 (7) ELECTRONIC SF-299.—The term “electronic
18 SF-299” means a version of Standard Form 299, or
19 a substantially similar form, that has been digitally
20 modified for online interaction.

21 (8) FEDERAL LAND.—The term “Federal land”
22 means land under the jurisdiction and management
23 of a Federal land management agency.

1 (9) FEDERAL LAND MANAGEMENT AGENCY.—

2 The term “Federal land management agency”
3 means—

4 (A) the National Park Service;

5 (B) the Bureau of Land Management;

6 (C) the Bureau of Reclamation;

7 (D) the United States Fish and Wildlife
8 Service;

9 (E) the Bureau of Indian Affairs; and

10 (F) the Forest Service.

11 (10) ORGANIZATIONAL UNIT.—The term “orga-
12 nizational unit” means—

13 (A) with respect to Federal land adminis-
14 tered by the Secretary of the Interior—

15 (i) a State office;

16 (ii) a district office;

17 (iii) a field office; or

18 (iv) a regional office; and

19 (B) with respect to the Forest Service—

20 (i) a regional office;

21 (ii) the headquarters;

22 (iii) an administrative unit; or

23 (iv) a ranger district office.

24 (11) PREVIOUSLY DISTURBED FEDERAL
25 LAND.—The term “previously disturbed Federal

land” means Federal land with respect to which a communications use authorization has been granted, issued, or executed.

(12) SECRETARY CONCERNED.—The term “Secretary concerned” means—

(A) the Secretary of the Interior, with respect to Federal land under the jurisdiction and management of the Secretary of the Interior, acting through, as applicable—

(i) the Commissioner of Reclamation;

(ii) the Director of the National Park Service;

(iii) the Director of the United States Fish and Wildlife Service;

(iv) the Director of the Bureau of Land Management; and

(v) the Director of the Bureau of Indian Affairs; and

(B) the Secretary of Agriculture, with respect to National Forest System land, acting through the Chief of the Forest Service.

(13) STANDARD FORM 299.—The term “Standard Form 299” means the form developed by the Administrator of General Services under section 6409(b)(2)(A) of the Middle Class Tax Relief and

1 Job Creation Act of 2012 (47 U.S.C. 1455(b)(2)(A))
 2 or any successor form.

3 (14) UNDERSERVED BROADBAND LOCATION.—

4 The term “underserved broadband location” means
 5 any location that lacks access to broadband service
 6 with a speed of not less than—

7 (A) 100 megabits per second for
 8 downloads; and

9 (B) 20 megabits per second for uploads.

10 (15) UNSERVED BROADBAND LOCATION.—The
 11 term “unserved broadband location” means any lo-
 12 cation that lacks access to broadband service with a
 13 speed of not less than—

14 (A) 25 megabits per second for downloads;
 15 and

16 (B) 3 megabits per second for uploads.

17 (16) WORKING GROUP.—The term “working
 18 group” means the Federal Land Management Agen-
 19 cy Working Group established by section 11(a).

20 **SEC. 3. PROMULGATION OF REGULATIONS FOR STREAM-**
 21 **LINING PURPOSES.**

22 (a) REGULATIONS.—Notwithstanding section 6409 of
 23 the Middle Class Tax Relief and Job Creation Act of 2012
 24 (47 U.S.C. 1455), not later than 1 year after the date

1 of enactment of this Act, the Secretary concerned shall
2 promulgate regulations—

3 (1) to ensure, to the maximum extent prac-
4 ticable, that the process is uniform and standardized
5 across applicable organizational units;

6 (2) to require that applications to locate or
7 modify communications facilities on covered land be
8 considered and granted on a competitively neutral,
9 technology neutral, and nondiscriminatory basis; and

10 (3) to require that the cost recovery fee for lo-
11 cating or modifying covered facilities on covered land
12 be—

13 (A) calculated and assessed on an annual
14 basis; and

15 (B) based solely on costs incurred by the
16 organizational unit in processing applications
17 and overseeing any construction related thereto.

18 (b) REQUIREMENTS.—The regulations promulgated
19 under subsection (a) shall—

20 (1) include procedures for the tracking of appli-
21 cations described in subsection (a)(1), including—

22 (A) identifying on a publicly available
23 website the number of applications—

24 (i) received;

25 (ii) approved; and

1 (iii) denied;

2 (B) in the case of an application that is
3 denied, requiring that the applicant be provided
4 with—

5 (i) a written decision describing the
6 reasons for the denial; and

7 (ii) an opportunity to cure or appeal
8 the denial; and

9 (C) describing the period of time between
10 the receipt of an application and the issuance of
11 a final decision on an application; and

12 (2) provide for minimum lease terms of not less
13 than 30 years for leases with respect to the location
14 of communications facilities on covered land.

15 (c) ADDITIONAL CONSIDERATIONS.—In promul-
16 gating regulations under subsection (a), the Secretary con-
17 cerned shall consider—

18 (1) how discrete reviews in considering an ap-
19 plication described in paragraph (1) of that sub-
20 section can be conducted simultaneously, rather than
21 sequentially, by any organizational units that must
22 approve the location or modification; and

23 (2) how to eliminate overlapping requirements
24 among the organizational units with respect to the
25 location or modification of a communications facility

1 on covered land administered by the organizational
2 units.

3 (d) COMMUNICATION OF STREAMLINED PROCESS TO
4 ORGANIZATIONAL UNITS.—The Secretary concerned
5 shall, with respect to the regulations promulgated under
6 subsection (a)—

7 (1) communicate the regulations to the applica-
8 ble organizational units; and

9 (2) ensure that those organizational units follow
10 the regulations.

11 (e) SAVINGS PROVISIONS.—

12 (1) REAL PROPERTY AUTHORITIES.—Nothing
13 in this section provides any executive agency or or-
14 ganizational unit with any new leasing or other real
15 property authorities not in existence before the date
16 of enactment of this Act.

17 (2) EFFECT ON OTHER LAWS.—

18 (A) IN GENERAL.—Nothing in this section,
19 including any action taken pursuant to this sec-
20 tion, affects a decision or determination made
21 by any executive agency before the date of en-
22 actment of this Act to sell, dispose of, declare
23 excess or surplus, lease, reuse, or redevelop any
24 Federal real property pursuant to title 40,
25 United States Code, the Federal Assets Sale

and Transfer Act of 2016 (40 U.S.C. 1303 note; Public Law 114–287), or any other law governing real property activities of the Federal Government.

(B) AGREEMENTS.—No agreement entered into pursuant to this section obligates the Federal Government to hold, control, or otherwise retain or use real property that may otherwise be deemed as excess, surplus, or that could otherwise be sold, leased, or redeveloped.

SEC. 4. ONLINE TRACKING OF APPLICATION PROGRESS.

(a) SENSE OF CONGRESS.—It is the sense of Congress that communications projects (as defined in section 41001 of the FAST Act (42 U.S.C. 4370m)) should be, under title XLI of the FAST Act (42 U.S.C. 4370m et seq.), considered a high priority as having an increased regional or national economic significance.

(b) COMMUNICATIONS PROJECTS AS COVERED PROJECTS.—Section 41001 of the FAST Act (42 U.S.C. 4370m) is amended—

(1) by redesignating paragraphs (4) through (18) as paragraphs (5) through (19), respectively;

(2) by inserting after paragraph (3) the following:

“(4) COMMUNICATIONS PROJECT.—

1 “(A) IN GENERAL.—The term ‘commu-
 2 nications project’ means any construction
 3 project carried out at a communications site.

4 “(B) OTHER TERMS.—For purposes of
 5 this paragraph:

6 “(i) COMMUNICATIONS FACILITY.—
 7 The term ‘communications facility’ in-
 8 cludes—

9 “(I) any infrastructure, including
 10 any transmitting device, tower, or
 11 support structure, and any equipment,
 12 switches, wiring, cabling, power
 13 sources, shelters, or cabinets, associ-
 14 ated with the licensed or permitted
 15 unlicensed wireless or wireline trans-
 16 mission of writings, signs, signals,
 17 data, images, pictures, and sounds of
 18 all kinds; and

19 “(II) any antenna or apparatus
 20 that—

21 “(aa) is designed for the
 22 purpose of emitting radio fre-
 23 quency;

24 “(bb)(AA) is designed to be
 25 operated, or is operating, from a

1 fixed location pursuant to author-
2 ization by the Federal Commu-
3 nications Commission; or

4 “(BB) is using duly author-
5 ized devices that do not require
6 individual licenses; and

7 “(cc) is added to a tower,
8 building, pole, cable, or other
9 structure.

10 “(ii) COMMUNICATIONS SITE.—The
11 term ‘communications site’ means an area
12 of Federal land available for communica-
13 tions use.

14 “(iii) COMMUNICATIONS USE.—

15 “(I) IN GENERAL.—The term
16 ‘communications use’ means the
17 placement or operation of infrastruc-
18 ture for wireline or wireless tele-
19 communications, including cable tele-
20 vision, television, and radio commu-
21 nications, regardless of whether the
22 placement or operation is pursuant to
23 a license issued by the Federal Com-
24 munications Commission or on an un-
25 licensed basis in accordance with the

1 regulations of the Federal Commu-
2 nications Commission.

3 “(II) INCLUSIONS.—The term
4 ‘communications use’ includes any an-
5 cillary activities, uses, or facilities di-
6 rectly related to the placement or op-
7 eration of infrastructure for wireline
8 or wireless telecommunications.

9 “(iv) FEDERAL LAND.—The term
10 ‘Federal land’ means land under the juris-
11 diction and management of a Federal land
12 management agency.

13 “(v) FEDERAL LAND MANAGEMENT
14 AGENCY.—The term ‘Federal land man-
15 agement agency’ means—

16 “(I) the National Park Service;

17 “(II) the Bureau of Land Man-
18 agement;

19 “(III) the Bureau of Reclama-
20 tion;

21 “(IV) the United States Fish and
22 Wildlife Service;

23 “(V) the Forest Service; and

24 “(VI) the Bureau of Indian Af-
25 fairs.”; and

1 (3) in paragraph (7)(A) (as so redesignated)—

2 (A) in the matter preceding clause (i), by
 3 inserting “communications projects,” after
 4 “carbon capture,”; and

5 (B) in clause (i), by striking subclause (II)
 6 and inserting the following:

7 “(II) is likely to require a total invest-
 8 ment—

9 “(aa) in the case of a commu-
 10 nications project, of any amount; and

11 “(bb) in the case of any other ac-
 12 tivity, of more than \$200,000,000;
 13 and”.

14 **SEC. 5. IMPROVING PUBLIC SAFETY ON FEDERAL LAND.**

15 Not later than 30 days after the date of enactment
 16 of this Act, the Secretary concerned shall direct the head
 17 of each Federal land management agency under the juris-
 18 diction of the Secretary concerned to establish a new cat-
 19 egorical exclusion from the requirements of title I of the
 20 National Environmental Policy Act of 1969 (42 U.S.C.
 21 4331 et seq.) for projects involving an existing commu-
 22 nications facility that would improve public safety on Fed-
 23 eral land, such as—

24 (1) providing backup power for the communica-
 25 tions facility;

1 (2) improving supporting infrastructure at the
2 communications facility; or

3 (3) providing more reliable or redundant con-
4 nection capabilities using the communications facil-
5 ity.

6 **SEC. 6. PREVIOUSLY DISTURBED RIGHTS-OF-WAY EXEMP-**
7 **TION.**

8 No review shall be required under the National Envi-
9 ronmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)
10 or division A of subtitle III of title 54, United States Code,
11 as a condition of granting a communications use author-
12 ization for the occupancy and use of previously disturbed
13 Federal land.

14 **SEC. 7. WIRELESS FACILITY MODIFICATIONS.**

15 Section 6409(a) of the Middle Class Tax Relief and
16 Job Creation Act of 2012 (47 U.S.C. 1455(a)) is amended
17 by striking paragraph (3).

18 **SEC. 8. ESTABLISHMENT OF ONLINE PORTALS.**

19 (a) IN GENERAL.—Not later than 1 year after the
20 date of enactment of this Act, each Federal land manage-
21 ment agency shall establish an online portal to accept an
22 electronic SF-299.

23 (b) COORDINATION.—The Federal land management
24 agencies shall coordinate with each other to establish uni-

1 form versions of the online portal required under sub-
 2 section (a).

3 **SEC. 9. COLLECTION AND RETENTION OF COST RECOVERY**
 4 **FEES.**

5 (a) COLLECTION AND RETENTION OF COST RECOVERY FEES ASSOCIATED WITH COMMUNICATIONS USE AUTHORIZATIONS ON FEDERAL LAND AND FEDERAL LAND MANAGEMENT AGENCY SUPPORT FOR COMMUNICATIONS SITE PROGRAMS.—

10 (1) SPECIAL ACCOUNT REQUIRED.—The Secretary of the Treasury shall establish a special account in the Treasury for each Federal land management agency for the deposit of cost recovery fees received by the Federal land management agency relating to communications use authorizations granted, issued, or executed by the Federal land management agency.

18 (2) REQUIREMENTS FOR COST RECOVERY FEES.—Notwithstanding any other provision of law, any cost recovery fees collected by a Federal land management agency pursuant to this section shall be—

23 (A) collected only to the extent provided in
 24 advance in an appropriations Act; and

1 (B) imposed on a competitively neutral,
 2 technology-neutral, and nondiscriminatory basis
 3 with respect to other uses of the applicable
 4 communications site.

5 (3) DEPOSIT AND RETENTION OF COST RECOV-
 6 ERY FEES.—Cost recovery fees received by a Federal
 7 land management agency shall—

8 (A) be deposited in the special account es-
 9 tablished for that Federal land management
 10 agency under paragraph (1); and

11 (B) remain available for expenditure under
 12 paragraph (4), to the extent and in such
 13 amounts as are provided in advance in appro-
 14 priations Acts.

15 (4) EXPENDITURE OF RETAINED FEES.—
 16 Amounts deposited in the special account established
 17 for a Federal land management agency under para-
 18 graph (1) shall be used by the Federal land manage-
 19 ment agency for activities relating to communica-
 20 tions use authorizations or communications sites, in-
 21 cluding the following:

22 (A) Administering communications use au-
 23 thorizations, including through cooperative
 24 agreements under subsection (b).

1 (B) Preparing needs assessments or other
2 programmatic analyses necessary to establish
3 communications sites and authorize communica-
4 tions uses on or adjacent to Federal land.

5 (C) Developing management plans for the
6 placement of communications sites on or adja-
7 cent to Federal land on a competitively neutral,
8 technology-neutral, nondiscriminatory basis.

9 (D) Training for management of commu-
10 nications sites on or adjacent to Federal land.

11 (E) Obtaining, improving access to, or es-
12 tablishing communications sites on or adjacent
13 to Federal land.

14 (F) Hiring and training personnel to per-
15 form duties that will help—

16 (i) to streamline permitting processes
17 associated with communications use au-
18 thorizations and the use of communica-
19 tions sites for communications use on Fed-
20 eral land; and

21 (ii) to reduce the time it takes for per-
22 mits relating to communications use au-
23 thorizations and the use of communica-
24 tions sites for communications use on Fed-
25 eral land to be approved.

1 (5) NO EFFECT ON OTHER FEE RETENTION AU-
 2 THORITIES.—This subsection shall not limit or oth-
 3 erwise affect fee retention by a Federal land man-
 4 agement agency under any other authority.

5 (b) COOPERATIVE AGREEMENT AUTHORITY.—The
 6 Secretary of the Interior may enter into cooperative agree-
 7 ments to carry out the activities described in subsection
 8 (a)(4).

9 (c) CLARIFICATION OF COOPERATIVE AGREEMENT
 10 AUTHORITY OF THE SECRETARY OF AGRICULTURE.—Sec-
 11 tion 8705(f) of the Agriculture Improvement Act of 2018
 12 (43 U.S.C. 1761a(f)) is amended by adding at the end
 13 the following:

14 “(6) COOPERATIVE AGREEMENT AUTHORITY.—
 15 The Secretary may enter into cooperative agree-
 16 ments to carry out the activities described in sub-
 17 paragraphs (A) through (D) of paragraph (4).”.

18 **SEC. 10. FEDERAL LAND MANAGEMENT AGENCY WORKING**
 19 **GROUP.**

20 (a) ESTABLISHMENT.—There is established a work-
 21 ing group, to be known as the “Federal Land Management
 22 Agency Working Group”.

23 (b) MEMBERSHIP.—The working group shall be com-
 24 posed of 1 representative of each of the Federal land man-

1 agement agencies, to be appointed by the Secretary con-
2 cerned.

3 (c) DUTIES.—The working group shall—

4 (1) periodically meet to coordinate and expedite
5 the review of applications for communications use
6 authorizations; and

7 (2) coordinate with the Federal Communica-
8 tions Commission to use broadband location data
9 created under section 802(c) of the Communications
10 Act of 1934 (47 U.S.C. 642(c)) to identify unserved
11 locations that may need to use a Federal right-of-
12 way and prepare for potential communications use
13 authorization applications.

○