

116TH CONGRESS
1ST SESSION

H. R. 292

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

IN THE HOUSE OF REPRESENTATIVES

JANUARY 8, 2019

Mr. CURTIS 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

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.

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 2019”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) BROADBAND PROJECT.—The term “broad-
2 band project” means an installation by a broadband
3 provider of wireless or broadband infrastructure, in-
4 cluding but not limited to, copper lines, fiber optic
5 lines, communications towers, buildings, or other im-
6 provements on Federal land.

7 (2) BROADBAND PROVIDER.—The term “broad-
8 band provider” means a provider of wireless or
9 broadband infrastructure that enables a user to
10 originate and receive high-quality voice, data, graph-
11 ics, and video telecommunications.

12 (3) INDIAN LANDS.—The term “Indian Lands”
13 means—

14 (A) any land owned by an Indian Tribe, lo-
15 cated within the boundaries of an Indian res-
16 ervation, pueblo, or rancheria; or

17 (B) any land located within the boundaries
18 of an Indian reservation, pueblo, or rancheria,
19 the title to which is held—

20 (i) in trust by the United States for
21 the benefit of an Indian Tribe or an indi-
22 vidual Indian;

23 (ii) by an Indian Tribe or an indi-
24 vidual Indian, subject to restriction against

1 alienation under laws of the United States;
2 or
3 (iii) by a dependent Indian commu-
4 nity.

5 (4) INDIAN TRIBE.—The term “Indian Tribe”
6 means a federally recognized Indian Tribe.

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

18 (6) SECRETARY CONCERNED.—The term “Sec-
19 retary concerned” means—

20 (A) the Secretary of Agriculture (acting
21 through the Chief of the Forest Service), with
22 respect to National Forest System land; and

23 (B) the Secretary of the Interior, with re-
24 spect to land managed by the Department of

1 the Interior (including land held in trust for an
2 Indian Tribe).

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

4 (a) IN GENERAL.—The Secretary concerned shall es-
5 tablish (or in the case where both Department of the Inte-
6 rior and National Forest System land would be affected,
7 shall jointly establish) a voluntary program under which
8 any State or Indian Tribe may offer, and the Secretary
9 concerned may agree, to enter into a memorandum of un-
10 derstanding to allow for the State or Indian Tribe to pre-
11 pare environmental analyses required under the National
12 Environmental Policy Act of 1969 (42 U.S.C. 4321 et
13 seq.) for the permitting of broadband projects within an
14 operational right-of-way on National Forest System land,
15 land managed by the Department of the Interior, and In-
16 dian Lands. Under such a memorandum of understanding,
17 an Indian Tribe or State may volunteer to cooperate with
18 the signatories to the memorandum in the preparation of
19 the analyses required under the National Environmental
20 Policy Act of 1969.

21 (b) ASSUMPTION OF RESPONSIBILITIES.—

22 (1) IN GENERAL.—In entering into a memo-
23 randum of understanding under this section, the
24 Secretary concerned may assign to the State or In-
25 dian Tribe, and the State or Indian Tribe may agree

1 to assume, all or part of the responsibilities of the
2 Secretary concerned for environmental analyses
3 under the National Environmental Policy Act of
4 1969 (42 U.S.C. 4321 et seq.).

5 (2) STATE OR INDIAN TRIBE RESPONSIBILITY.—
6

7 (A) IN GENERAL.—A State or Indian
8 Tribe that assumes any responsibility under
9 paragraph (1) shall be subject to the same pro-
10 cedural and substantive requirements as would
11 apply if the responsibility were carried out by
12 the Secretary concerned.

13 (B) EFFECT OF ASSUMPTION OF RESPONSIBILITY.—A State or Indian Tribe that as-
14 sumes any responsibility, including financial re-
15 sponsibility, under paragraph (1) shall be solely
16 responsible and solely liable for carrying out, in
17 lieu of the Secretary concerned, the responsibil-
18 ities assumed under that paragraph until the
19 date on which the program is terminated under
20 subsection (g).
21

22 (C) ENVIRONMENTAL REVIEW.—A State
23 or Indian Tribe that assumes any responsibility
24 under paragraph (1) shall comply with the envi-
25 ronmental review procedures under parts 1500–

1 1508 of title 40, Code of Federal Regulations
2 (or successor regulations), and the regulations
3 of the Secretary concerned.

4 (3) FEDERAL RESPONSIBILITY.—Any responsi-
5 bility of the Secretary concerned described in para-
6 graph (1) that is not explicitly assumed by the State
7 or Indian Tribe in the memorandum of under-
8 standing shall remain the responsibility of the Sec-
9 retary concerned.

10 (c) OFFER AND NOTIFICATION.—A State or Indian
11 Tribe that intends to offer to enter into a memorandum
12 of understanding under this section shall provide to the
13 Secretary concerned notice of the intent of the State or
14 Indian Tribe not later than 90 days before the date on
15 which the State or Indian Tribe submits a formal written
16 offer to the Secretary concerned.

17 (d) TRIBAL CONSULTATION.—Within 90 days of en-
18 tering into any memorandum of understanding with a
19 State, the Secretary concerned shall initiate consultation
20 with relevant Indian Tribes.

21 (e) MEMORANDUM OF UNDERSTANDING.—A memo-
22 randum of understanding entered into under this section
23 shall—

24 (1) be executed by the Governor or the Gov-
25 ernor's designee, or in the case of an Indian Tribe,

1 by an officer designated by the governing body of
2 the Indian Tribe;

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

4 (3) be in such form as the Secretary concerned
5 may prescribe;

6 (4) provide that the State or Indian Tribe—

7 (A) agrees to assume all or part of the re-
8 sponsibilities of the Secretary concerned de-
9 scribed in subsection (b)(1);

10 (B) expressly consents, including through
11 the adoption of express waivers of sovereign im-
12 munity, on behalf of the State or Indian Tribe,
13 to accept the jurisdiction of the Federal courts
14 for the compliance, discharge, and enforcement
15 of any responsibility of the Secretary concerned
16 assumed by the State or Indian Tribe;

17 (C) certify that State laws and regulations,
18 with respect to States, or Tribal laws and regu-
19 lations, with respect to Indian Tribes, are in ef-
20 fect that—

21 (i) authorize the State or Indian Tribe
22 to take the actions necessary to carry out
23 the responsibilities being assumed; and

24 (ii) are comparable to section 552 of
25 title 5, United States Code, including pro-

1 viding that any decision regarding the pub-
2 lic availability of a document under the
3 State laws is reviewable by a court of com-
4 petent jurisdiction;

5 (D) agrees to maintain the financial re-
6 sources necessary to carry out the responsibil-
7 ities being assumed;

8 (E) agrees to provide to the Secretary con-
9 cerned any information the Secretary concerned
10 considers necessary to ensure that the State or
11 Indian Tribe is adequately carrying out the re-
12 sponsibilities assigned to and assumed by the
13 State or Indian Tribe;

14 (F) agrees to return revenues generated
15 from the use of public lands authorized under
16 this section to the United States annually, in
17 accordance with the Federal Land Policy Man-
18 agement Act of 1976 (43 U.S.C. 1701 et seq.);
19 and

20 (G) agrees to send a copy of all author-
21 izing documents to the United States for proper
22 notation and recordkeeping;

23 (5) prioritize and expedite any analyses under
24 the National Environmental Policy Act of 1969 (42

1 U.S.C. 4321 et seq.) under the memorandum of un-
2 derstanding;

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

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

8 (f) LIMITATION.—Nothing in this section permits a
9 State or Indian Tribe to assume—

10 (1) any rulemaking authority of the Secretary
11 concerned under any Federal law; and

12 (2) Federal Government responsibilities for gov-
13 ernment-to-government consultation with Indian
14 Tribes.

15 (g) TERMINATION.—

16 (1) TERMINATION BY THE SECRETARY.—The
17 Secretary concerned may terminate the participation
18 of any State or Indian Tribe in the program estab-
19 lished under this section if—

20 (A) the Secretary concerned determines
21 that the State or Indian Tribe is not adequately
22 carrying out the responsibilities assigned to and
23 assumed by the State or Indian Tribe;

24 (B) the Secretary concerned provides to
25 the State or Indian Tribe—

1 (i) notification of the determination of
2 noncompliance; and

3 (ii) a period of at least 30 days during
4 which to take such corrective action as the
5 Secretary concerned determines is nec-
6 essary to comply with the applicable agree-
7 ment; and

8 (C) the State or Indian Tribe, after the no-
9 tification and period provided under subpara-
10 graph (B), fails to take satisfactory corrective
11 action, as determined by the Secretary con-
12 cerned.

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

20 (3) TERMINATION OF MEMORANDUM OF UN-
21 DERSTANDING WITH STATE OR INDIAN TRIBE.—A
22 State or an Indian Tribe may terminate a joint
23 memorandum of understanding under this section at
24 any time by providing to the Secretary concerned a

1 notice of intent to terminate by no later than the
2 date that is 90 days before the date of termination.

3 **SEC. 4. FEDERAL BROADBAND PERMIT COORDINATION.**

4 (a) ESTABLISHMENT.—The Secretary concerned
5 shall establish a broadband permit streamlining team com-
6 prised of qualified staff under subsection (b)(4) in each
7 State or regional office that has been delegated responsi-
8 bility for issuing permits for broadband projects.

9 (b) MEMORANDUM OF UNDERSTANDING.—

10 (1) IN GENERAL.—Not later than 90 days after
11 the date of enactment of this Act, the Secretary con-
12 cerned, in consultation with the National Conference
13 of State Historic Preservation Officers and the Na-
14 tional Tribal Historic Preservation Officers Associa-
15 tion, shall enter into a memorandum of under-
16 standing to carry out this section with—

17 (A) the Secretary of Agriculture or of the
18 Interior, as appropriate;

19 (B) the Director of the Bureau of Indian
20 Affairs; and

21 (C) the Director of the United States Fish
22 and Wildlife Service.

23 (2) PURPOSE.—The purpose of the memo-
24 randum of understanding under paragraph (1) is to

1 coordinate and expedite permitting decisions for
2 broadband projects.

3 (3) STATE OR TRIBAL PARTICIPATION.—The
4 Secretary concerned may request that the Governor
5 of any State or the officer designated by the gov-
6 erning body of the Indian Tribe with one or more
7 broadband projects be a party to the memorandum
8 of understanding under paragraph (1).

9 (4) DESIGNATION OF QUALIFIED STAFF.—

10 (A) IN GENERAL.—Not later than 30 days
11 after the date of entrance into the memo-
12 randum of understanding under paragraph (1),
13 the head of each Federal agency that is a party
14 to the memorandum of understanding (other
15 than the Secretary concerned) may, if the head
16 of the Federal agency determines it to be ap-
17 propriate, designate to each State or regional
18 office an employee of that Federal agency with
19 expertise in regulatory issues relating to that
20 Federal agency, including, as applicable, par-
21 ticular expertise in—

22 (i) planning under the Forest and
23 Rangeland Renewable Resources Planning
24 Act of 1974 (16 U.S.C. 1600 et seq.) and
25 planning under the Federal Land Policy

1 Management Act of 1976 (43 U.S.C. 1701
2 et seq.);

3 (ii) the preparation of analyses under
4 the National Environmental Policy Act of
5 1969 (42 U.S.C. 4321 et seq.); or

6 (iii) consultation and the preparation
7 of biological opinions under section 7 of
8 the Endangered Species Act of 1973 (16
9 U.S.C. 1536).

10 (B) DUTIES.—Each employee designated
11 under subparagraph (A) shall—

12 (i) be responsible for any issue relat-
13 ing to any broadband project within the ju-
14 risdiction of the State or regional office
15 under the authority of the Federal agency
16 from which the employee is assigned;

17 (ii) participate as part of the team of
18 personnel working on one or more pro-
19 posed broadband projects, including plan-
20 ning and environmental analyses; and

21 (iii) serve as the designated point of
22 contact with any applicable State or Indian
23 Tribe that assumes any responsibility

- 1 under section 3(b)(1) relating to any issue
- 2 described in clause (i).

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