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S. 2163

To amend title 23, United States Code, to direct the Secretary of Transportation to require that broadband conduits be installed as a part of certain highway construction projects, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 7, 2015

Ms. KLOBUCHAR (for herself, Mr. DAINES, and Mr. GARDNER) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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A BILL

To amend title 23, United States Code, to direct the Secretary of Transportation to require that broadband conduits be installed as a part of certain highway construction projects, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Streamlining and Investing in Broadband Infrastructure Act''.

SEC. 2. IMPROVING COORDINATION AT STATE LEVEL.

The Administrator of the National Telecommunications and Information Administration shall develop and

issue best practices relating to broadband infrastructure and installation for State broadband coordination offices, with an emphasis on rural areas.

SEC. 3. INCLUSION OF BROADBAND CONDUIT INSTALLATION IN CERTAIN HIGHWAY CONSTRUCTION PROJECTS.

(a) IN GENERAL.—Chapter 3 of title 23, United States Code, is amended by adding at the end the following:

"§ 330. Inclusion of broadband conduit installation in certain highway construction projects

''(a) DEFINITIONS.—In this section:

''(1) BROADBAND.—The term 'broadband' means an Internet Protocol-based transmission service that enables users to send and receive voice, video, data, or graphics, or a combination of those items.

''(2) BROADBAND CONDUIT.—The term 'broadband conduit' means a conduit for materials that support broadband or, where appropriate, wireless facilities for broadband service.

''(3) COVERED HIGHWAY CONSTRUCTION PROJECT.—The term 'covered highway construction project' means a project to construct a new highway

or to construct an additional lane for an existing highway that—

"(A) is commenced after the date of enactment of this section; and

"(B) receives funding under this title.

"(b) REQUIREMENT.—The Secretary shall require States to install 1 or more broadband conduits in accordance with this section as part of any covered highway construction project.

"(c) INSTALLATION REQUIREMENTS.—In carrying out subsection (b), the Secretary shall ensure, to the maximum extent practicable with respect to a covered highway construction project, that—

"(1) an appropriate number of broadband conduits, as determined by the Secretary, are installed along the highway to accommodate multiple broadband providers, with consideration given to the availability of existing conduits;

"(2) the size of each such conduit is consistent with industry best practices and is sufficient to accommodate potential demand, as determined by the Secretary; and

"(3) hand holes and manholes for fiber access and pulling with respect to each such conduit are

placed at intervals consistent with industry best practices, as determined by the Secretary.

"(d) STANDARDS.—

"(1) IN GENERAL.—In establishing standards to carry out subsection (c), the Secretary shall take into consideration—

"(A) population density in the area of a covered highway construction project;

"(B) the type of highway involved in the project; and

"(C) existing broadband access in the area of the project.

"(2) RURAL AREAS.—The Secretary shall ensure that the standards established to carry out subsection (c) apply to all areas, including rural and remote areas with low population density.

"(e) PULL TAPE.—Each broadband conduit installed pursuant to this section shall include a pull tape and be capable of supporting fiber optic cable placement techniques consistent with industry best practices, as determined by the Secretary.

"(f) ACCESS.—The Secretary shall ensure that any requesting broadband provider has access to each broadband conduit installed pursuant to this section, on

a competitively neutral and nondiscriminatory basis, for a charge not to exceed a cost-based rate.

"(g) DEPTH OF INSTALLATION.—Each broadband conduit installed pursuant to this section shall be placed at a depth consistent with industry best practices, as determined by the Secretary, after consideration is given to the location of existing utilities and the cable separation requirements of State and local electrical codes.

"(h) WAIVER AUTHORITY.—The Secretary may waive the application of this section or any provision of this section if the Secretary determines that, upon a showing of undue burden or that a covered highway construction project is not necessary based on the availability of existing broadband conduit infrastructure, cost-benefit analysis, or consideration of other relevant factors, the waiver is appropriate with respect to a covered highway construction project.

"(i) COORDINATION WITH FCC AND NTIA ADMINISTRATOR.—In carrying out this section, the Secretary shall coordinate with the Federal Communications Commission and the Administrator of the National Telecommunications and Information Administration, including with respect to determinations regarding—

"(1) potential demand under subsection (c)(2);

"(2) existing broadband access under subsection (d)(1)(C);

"(3) pull tape requirements under subsection (e); and

"(4) depth-of-installation standards under subsection (g).

"(j) REGISTRY.—Not later than 1 year after the date of enactment of this section, the Secretary shall establish and maintain a registry that contains information regarding the broadband conduit projects carried out under this section.".

(b) CONFORMING AMENDMENT.—The analysis for chapter 3 of title 23, United States Code, is amended by adding at the end the following:

"330. Inclusion of broadband conduit installation in certain highway construction projects.".

SEC. 4. REPORT TO CONGRESS.

Not later than 2 years after the date of enactment of this Act, and every 2 years thereafter until the date that is 10 years after the date of enactment of this Act, the Secretary of Transportation shall submit to Congress a report on the implementation and installation of broadband conduit projects under section 330 of title 23, United States Code.

SEC. 5. TELECOMMUNICATIONS FACILITIES DEPLOYMENT.

(a) IN GENERAL.—Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. 1455) is amended by striking subsections (b) through (d) and inserting the following:

"(b) FEDERAL LANDS.—

"(1) DEFINITIONS.—In this subsection—

"(A) the term 'Administrator' means the Administrator of General Services;

"(B) the term 'communications facility installation' includes—

"(i) any wireless or wireline infrastructure for the transmission of writing, signs, signals, data, images, pictures, and sounds of all kinds;

"(ii) the transmitting device, tower, or support structure, and any equipment, switches, wiring, cabling, power sources, shelters, or cabinets, associated with the provision of communications services; and

"(iii) any antenna or apparatus that—

"(I) is designed for the purpose of emitting radio frequency;

"(II) is designed to be operated, or is operating, from a fixed location

pursuant to authorization by the Commission; and

"(III) is added to a tower, building, or other structure;

"(C) the term 'covered agency' means—

"(i) the Department of Defense;

"(ii) the Department of the Interior;

"(iii) the Department of Agriculture;

"(iv) the Department of Commerce;

"(v) the Department of Transportation;

"(vi) the Department of Veterans Affairs;

"(vii) the United States Postal Service;

"(viii) the Federal Communications Commission;

"(ix) the Council on Environmental Quality;

"(x) the Advisory Council on Historic Preservation;

"(xi) the Department of Homeland Security; and

"(xii) the Executive Office of the President;

"(D) the term 'executive agency' has the meaning given the term in section 102 of title 40, United States Code; and

"(E) the term 'placement', with respect to a communications facility installation, includes the installation, construction, modification, or maintenance of the communications facility installation.

"(2) FEDERAL PROPERTY.—

"(A) GRANT.—If an executive agency, a State, a political subdivision or agency of a State, or a person, firm, or organization applies for the grant of a real property interest, including a lease, license, easement, or right-of-way, to, in, over, or on a building or other property owned by the Federal Government for the right to install, construct, modify, and maintain a communications facility installation, the executive agency that owns the building or other property on behalf of the Federal Government shall grant to the applicant, if technically feasible, a real property interest to perform such installation, construction, modification, and maintenance.

"(B) APPLICATIONS.—

"(i) MULTIPLE TENANTS.—Competitive procurement requirements shall not apply to an application for a grant of a real property interest under subparagraph (A).

"(ii) MULTIPLE GRANTS.—An executive agency that owns a building or other property and receives applications described in subparagraph (A) for multiple grants of real property interests, either from the same applicant or different applicants, shall provide multiple grants if technically feasible.

"(iii) DETERMINATIONS.—

"(I) IN GENERAL.—An executive agency that receives an application for a grant of real property interest under subparagraph (A) shall make a determination as to whether to provide the grant not later than 90 days after the date on which the application is submitted.

"(II) DENIAL OF GRANT.—If an executive agency determines not to provide a grant of real property inter-

est under subparagraph (A), the executive agency shall notify the applicant, in writing, of the reasons for the determination.

"(iv) TERM OF YEARS.—The standard term of the grant of a real property interest under subparagraph (A) shall be 25 years with allowances for reexamination of the fee schedule at the end of each 5-year period within the 25-year period.

"(v) RENEWAL.—The grant of a real property interest shall enjoy an expectancy of renewal of the real property interest upon the expiration of the term described in clause (iv).

"(C) FEES.—

"(i) STANDARD FEE.—

"(I) IN GENERAL.—Notwithstanding any other provision of law, the Administrator, in consultation with the head of each covered agency, shall establish a standard fee schedule for the grant of a real property interest under subparagraph (A) based on direct cost recovery.

"(II) INITIAL FEE.—

"(aa) AMOUNT OF FEE.—The initial amount of the standard fee established under subclause (I) shall be equal to the average fee charged by the Federal Government for the grant of a real property interest for the placement of a communications facility installation during the most recent 3-year period.

"(bb) PUBLICATION OF PROPOSED FEE.—Not later than 90 days after the date of enactment of the Streamlining and Investing in Broadband Infrastructure Act, the Administrator shall publish a notice in the Federal Register that—

"(AA) proposes an initial amount of the standard fee under subclause (I);

"(BB) describes the data on which the proposed initial amount is based; and

"(CC) invites public comment on the proposed initial amount.

"(cc) DEADLINE FOR FINALIZED STANDARD FEE.—Not later than 150 days after the date of enactment of the Streamlining and Investing in Broadband Infrastructure Act, the Administrator shall publish a decision in the Federal Register that sets the initial amount of the standard fee.

"(III) LIMIT ON ANNUAL INCREASES.—During any year, the Administrator may not increase the standard fee established under subclause (I) or clause (ii) by a percentage that is greater than the lower of—

"(aa) the percentage increase in the Consumer Price Index for All Urban Consumers (all items, United States city average) published by the Bureau

of Labor Statistics for the most recent 12-month period; or

"(bb) 3 percent.

"(ii) AGENCY-SPECIFIC FEE.—

"(I) IN GENERAL.—An executive agency shall charge the standard fee established by the Administrator under clause (i) for a grant of a real property interest unless, not later than 90 days after the date on which the Administrator publishes the amount of the finalized initial fee under clause (i)(II)(cc), the executive agency establishes an agency-specific fee in an amount that is equal to the average fee charged by the executive agency for the placement of a communications facility installation during the most recent 3-year period.

"(II) PUBLIC COMMENT.—During the process of establishing an agency-specific fee under subclause (I), an executive agency shall—

"(aa) make a description of the data on which the fee is based publically available; and

"(bb) allow opportunity for public comment.

"(iii) ENTIRETY OF FEES.—The Administrator or an executive agency may not charge any additional fee for the grant of a real property interest for the placement of a communications facility installation other than what has been established in the standard fee under clause (i) or an agency-specific fee established under clause (ii).

"(iv) WAIVERS.—In consideration of the public benefit provided by a grant of a real property interest under subparagraph (A), the Administrator or an executive agency may grant a full or partial waiver of the fee required under clause (i) or (ii).

"(v) USE OF FEES COLLECTED.—Any fee amount collected under this paragraph for the grant of a real property interest by an executive agency under subparagraph (A) shall be made available, as provided in

appropriations Acts, to the executive agency to cover the cost of granting the real property interest.

"(3) MASTER CONTRACTS FOR COMMUNICATIONS FACILITY INSTALLATIONS.—

"(A) IN GENERAL.—Notwithstanding section 704 of the Telecommunications Act of 1996 or any other provision of law, the Administrator, in consultation with the head of each covered agency, shall—

"(i) not later than 60 days after the date of enactment of this subsection, develop and adopt 1 or more master application forms and standard contracts, including lease and easement contracts, for all executive agencies, that shall govern the placement of a communications facility installation to, in, over, or on a building or other property owned by the Federal Government;

"(ii) in developing the master application forms and standard contracts under subparagraph (A)—

"(I) include in each master application form or standard contract the

standard fee schedule and standard fee established under paragraph (2)(C)(i)(I); and

"(II) standardize the treatment of—

"(aa) the placement of a communications facility installation to, in, over, or on the rooftop or facade of a building or inside a building;

"(bb) the technology used in connection with a communications facility installation placed on a Federal building or other property; and

"(cc) any other key issues the Administrator considers appropriate;

"(iii) not later than 30 days after the date on which the Administrator adopts the master application forms and standard contracts under clause (i), publish the master application forms and standard contracts in the Federal Register; and

"(iv) direct each executive agency to begin accepting the master application forms and standard contracts from applicants not later than 30 days after the date on which the Administrator adopts the master application forms and standard contracts under clause (i).

"(B) APPLICABILITY.—

"(i) IN GENERAL.—Except as provided in clause (ii), the master application forms and standard contracts developed by the Administrator under subparagraph (A)(i) shall apply to each building or other property owned by the Federal Government.

"(ii) EXCEPTION.—If the Administrator determines that the master application forms and standard contracts developed under subparagraph (A)(i) are not adequate for a specific building or other property, the Administrator shall—

"(I) not later than 10 days after the date on which the Administrator makes the determination, provide written notification to the applicant,

which shall detail the reasons why the application forms and contracts are not adequate for a specific building or property; and

"(II) work in coordination with the heads of the appropriate agencies to address the inadequacies and provide, not later than 60 days after the date on which the notification was provided under subclause (I), an adequate application form or contract to the applicant.

"(C) NEGOTIATION AND APPROVAL.—If the Administrator fails to adopt master application forms and standard contracts as required under subparagraph (A)(i) during the 1-year period beginning on the date of enactment of the Streamlining and Investing in Broadband Infrastructure Act, beginning on the day after the expiration of that period and until the date on which the Administrator adopts such forms and contracts—

"(i) an applicant for a grant of a real property interest from an executive agency under paragraph (2)(A) may use an exist-

ing application form or contract with the executive agency; and

"(ii) the executive agency shall accept the existing application form or contract.

"(D) ESCALATION AND REVIEW.—Not later than 60 days after the date of enactment of the Streamlining and Investing in Broadband Infrastructure Act, each executive agency shall establish a supervisory review process under which an executive working group or established agency executive with negotiation and approval authority shall review any communications facility installation application, lease, or easement if an applicant requests such review.

"(E) INCORPORATION OF SUBSECTION (a).—An executive agency may not deny, and shall approve, any eligible facilities request (as defined in subsection (a)(2)) for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of the tower or base station.

"(4) PROGRESS REPORTS.—Not later than 90 days after the date of enactment of the Streamlining and Investing in Broadband Infrastructure Act, and every 2 years thereafter until the date that is 10

years after the date of enactment of that Act, the Administrator shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report that describes, with respect to each executive agency—

"(A) the number of sites sought in applications for the placement of a communications facility installation, including upgrades and collocations;

"(B) the number of sites approved; and

"(C) the number of sites completed.".

(b) SAVINGS PROVISION.—Notwithstanding the amendment made by subsection (a), an executive agency may make a grant of a real property interest and may collect fees in accordance with subsection (b) of section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. 1455(b)) (as in effect on the day before the date of enactment of this Act) until the effective date of the regulations issued by the head of the executive agency to carry out the amendment made by subsection (a).

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