

115TH CONGRESS  
2D SESSION

# S. 2381

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.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 6, 2018

Ms. KLOBUCHAR (for herself, Mr. DAINES, Mr. GARDNER, and Mrs. GILLIBRAND) 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.

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 “Streamlining and In-  
5 vesting in Broadband Infrastructure Act”.

6 **SEC. 2. IMPROVING COORDINATION AT STATE LEVEL.**

7 The Administrator of the National Telecommuni-  
8 cations and Information Administration shall develop and

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

4 **SEC. 3. INCLUSION OF BROADBAND CONDUIT INSTALLA-**  
 5 **TION IN CERTAIN HIGHWAY CONSTRUCTION**  
 6 **PROJECTS.**

7 (a) IN GENERAL.—Chapter 3 of title 23, United  
 8 States Code, is amended by adding at the end the fol-  
 9 lowing:

10 **“§ 331. Inclusion of broadband conduit installation in**  
 11 **certain highway construction projects**

12 “(a) DEFINITIONS.—In this section:

13 “(1) BROADBAND.—The term ‘broadband’  
 14 means an Internet Protocol-based transmission serv-  
 15 ice that enables users to send and receive voice,  
 16 video, data, or graphics, or a combination of those  
 17 items.

18 “(2) BROADBAND CONDUIT.—The term  
 19 ‘broadband conduit’ means a conduit for materials  
 20 that support broadband or, where appropriate, wire-  
 21 less facilities for broadband service.

22 “(3) COVERED HIGHWAY CONSTRUCTION  
 23 PROJECT.—The term ‘covered highway construction  
 24 project’ means a project to construct a new highway

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

3 “(A) is commenced after the date of enact-  
4 ment of this section; and

5 “(B) receives funding under this title.

6 “(b) REQUIREMENT.—The Secretary shall require  
7 States to install 1 or more broadband conduits in accord-  
8 ance with this section as part of any covered highway con-  
9 struction project.

10 “(c) INSTALLATION REQUIREMENTS.—In carrying  
11 out subsection (b), the Secretary shall ensure, to the max-  
12 imum extent practicable with respect to a covered highway  
13 construction project, that—

14 “(1) an appropriate number of broadband con-  
15 duits, as determined by the Secretary, are installed  
16 along the highway to accommodate multiple  
17 broadband providers, with consideration given to the  
18 availability of existing conduits;

19 “(2) the size of each such conduit is consistent  
20 with industry best practices and is sufficient to ac-  
21 commodate potential demand, as determined by the  
22 Secretary; and

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

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

3 “(d) STANDARDS.—

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

7 “(A) population density in the area of a  
8 covered highway construction project;

9 “(B) the type of highway involved in the  
10 project; and

11 “(C) existing broadband access in the area  
12 of the project.

13 “(2) RURAL AREAS.—The Secretary shall en-  
14 sure that the standards established to carry out sub-  
15 section (c) apply to all areas, including rural and re-  
16 mote areas with low population density.

17 “(e) PULL TAPE.—Each broadband conduit installed  
18 pursuant to this section shall include a pull tape and be  
19 capable of supporting fiber optic cable placement tech-  
20 niques consistent with industry best practices, as deter-  
21 mined by the Secretary.

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

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

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

9 “(h) WAIVER AUTHORITY.—The Secretary may  
10 waive the application of this section or any provision of  
11 this section if the Secretary determines that, upon a show-  
12 ing of undue burden or that a covered highway construc-  
13 tion project is not necessary based on the availability of  
14 existing broadband conduit infrastructure, cost-benefit  
15 analysis, or consideration of other relevant factors, the  
16 waiver is appropriate with respect to a covered highway  
17 construction project.

18 “(i) COORDINATION WITH FCC AND NTIA ADMINIS-  
19 TRATOR.—In carrying out this section, the Secretary shall  
20 coordinate with the Federal Communications Commission  
21 and the Administrator of the National Telecommuni-  
22 cations and Information Administration, including with  
23 respect to determinations regarding—

24 “(1) potential demand under subsection (c)(2);

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

3           “(3) pull tape requirements under subsection  
4           (e); and

5           “(4) depth-of-installation standards under sub-  
6           section (g).

7           “(j) REGISTRY.—Not later than 1 year after the date  
8 of enactment of this section, the Secretary shall establish  
9 and maintain a registry that contains information regard-  
10 ing the broadband conduit projects carried out under this  
11 section.”.

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

“331. Inclusion of broadband conduit installation in certain highway construc-  
tion projects.”.

15 **SEC. 4. REPORT TO CONGRESS.**

16           Not later than 2 years after the date of enactment  
17 of this Act, and every 2 years thereafter until the date  
18 that is 10 years after the date of enactment of this Act,  
19 the Secretary of Transportation shall submit to Congress  
20 a report on the implementation and installation of  
21 broadband conduit projects under section 331 of title 23,  
22 United States Code.

1 **SEC. 5. TELECOMMUNICATIONS FACILITIES DEPLOYMENT.**

2 (a) IN GENERAL.—Section 6409 of the Middle Class  
3 Tax Relief and Job Creation Act of 2012 (47 U.S.C.  
4 1455) is amended by striking subsections (b) through (d)  
5 and inserting the following:

6 “(b) FEDERAL LANDS.—

7 “(1) DEFINITIONS.—In this subsection—

8 “(A) the term ‘Administrator’ means the  
9 Administrator of General Services;

10 “(B) the term ‘communications facility in-  
11 stallation’ includes—

12 “(i) any wireless or wireline infra-  
13 structure for the transmission of writing,  
14 signs, signals, data, images, pictures, and  
15 sounds of all kinds;

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

21 “(iii) any antenna or apparatus  
22 that—

23 “(I) is designed for the purpose  
24 of emitting radio frequency;

25 “(II) is designed to be operated,  
26 or is operating, from a fixed location

1                   pursuant to authorization by the  
2                   Commission; and

3                   “ (III) is added to a tower, build-  
4                   ing, or other structure;

5                   “(C) the term ‘covered agency’ means—

6                   “(i) the Department of Defense;

7                   “(ii) the Department of the Interior;

8                   “(iii) the Department of Agriculture;

9                   “(iv) the Department of Commerce;

10                  “(v) the Department of Transpor-  
11                  tation;

12                  “(vi) the Department of Veterans Af-  
13                  fairs;

14                  “(vii) the United States Postal Serv-  
15                  ice;

16                  “(viii) the Federal Communications  
17                  Commission;

18                  “(ix) the Council on Environmental  
19                  Quality;

20                  “(x) the Advisory Council on Historic  
21                  Preservation;

22                  “(xi) the Department of Homeland  
23                  Security; and

24                  “(xii) the Executive Office of the  
25                  President;



1           “(D) the term ‘executive agency’ has the  
2 meaning given the term in section 102 of title  
3 40, United States Code; and

4           “(E) the term ‘placement’, with respect to  
5 a communications facility installation, includes  
6 the installation, construction, modification, or  
7 maintenance of the communications facility in-  
8 stallation.

9           “(2) FEDERAL PROPERTY.—

10           “(A) GRANT.—If an executive agency, a  
11 State, a political subdivision or agency of a  
12 State, or a person, firm, or organization applies  
13 for the grant of a real property interest, includ-  
14 ing a lease, license, easement, or right-of-way,  
15 to, in, over, or on a building or other property  
16 owned by the Federal Government for the right  
17 to install, construct, modify, and maintain a  
18 communications facility installation, the execu-  
19 tive agency that owns the building or other  
20 property on behalf of the Federal Government  
21 shall grant to the applicant, if technically fea-  
22 sible, a real property interest to perform such  
23 installation, construction, modification, and  
24 maintenance.

25           “(B) APPLICATIONS.—

1           “(i) MULTIPLE TENANTS.—Competi-  
2           tive procurement requirements shall not  
3           apply to an application for a grant of a  
4           real property interest under subparagraph  
5           (A).

6           “(ii) MULTIPLE GRANTS.—An execu-  
7           tive agency that owns a building or other  
8           property and receives applications de-  
9           scribed in subparagraph (A) for multiple  
10          grants of real property interests, either  
11          from the same applicant or different appli-  
12          cants, shall provide multiple grants if tech-  
13          nically feasible.

14          “(iii) DETERMINATIONS.—

15                 “(I) IN GENERAL.—An executive  
16                 agency that receives an application for  
17                 a grant of real property interest under  
18                 subparagraph (A) shall make a deter-  
19                 mination as to whether to provide the  
20                 grant not later than 90 days after the  
21                 date on which the application is sub-  
22                 mitted.

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

1 est under subparagraph (A), the execu-  
2 tive agency shall notify the applicant,  
3 in writing, of the reasons for the de-  
4 termination.

5 “(iv) TERM OF YEARS.—The standard  
6 term of the grant of a real property inter-  
7 est under subparagraph (A) shall be 25  
8 years with allowances for reexamination of  
9 the fee schedule at the end of each 5-year  
10 period within the 25-year period.

11 “(v) RENEWAL.—The grant of a real  
12 property interest shall enjoy an expectancy  
13 of renewal of the real property interest  
14 upon the expiration of the term described  
15 in clause (iv).

16 “(C) FEES.—

17 “(i) STANDARD FEE.—

18 “(I) IN GENERAL.—Notwith-  
19 standing any other provision of law,  
20 the Administrator, in consultation  
21 with the head of each covered agency,  
22 shall establish a standard fee schedule  
23 for the grant of a real property inter-  
24 est under subparagraph (A) based on  
25 direct cost recovery.

1 “(II) INITIAL FEE.—

2 “(aa) AMOUNT OF FEE.—

3 The initial amount of the stand-  
4 ard fee established under sub-  
5 clause (I) shall be equal to the  
6 average fee charged by the Fed-  
7 eral Government for the grant of  
8 a real property interest for the  
9 placement of a communications  
10 facility installation during the  
11 most recent 3-year period.

12 “(bb) PUBLICATION OF PRO-  
13 POSED FEE.—Not later than 90  
14 days after the date of enactment  
15 of the Streamlining and Investing  
16 in Broadband Infrastructure Act,  
17 the Administrator shall publish a  
18 notice in the Federal Register  
19 that—

20 “(AA) proposes an ini-  
21 tial amount of the standard  
22 fee under subclause (I);

23 “(BB) describes the  
24 data on which the proposed  
25 initial amount is based; and

1                   “(CC) invites public  
2                   comment on the proposed  
3                   initial amount.

4                   “(cc) DEADLINE FOR FINAL-  
5                   IZED STANDARD FEE.—Not later  
6                   than 150 days after the date of  
7                   enactment of the Streamlining  
8                   and Investing in Broadband In-  
9                   frastructure Act, the Adminis-  
10                  trator shall publish a decision in  
11                  the Federal Register that sets  
12                  the initial amount of the stand-  
13                  ard fee.

14                  “(III) LIMIT ON ANNUAL IN-  
15                  CREASES.—During any year, the Ad-  
16                  ministrator may not increase the  
17                  standard fee established under sub-  
18                  clause (I) or clause (ii) by a percent-  
19                  age that is greater than the lower  
20                  of—

21                  “(aa) the percentage in-  
22                  crease in the Consumer Price  
23                  Index for All Urban Consumers  
24                  (all items, United States city av-  
25                  erage) published by the Bureau

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

3 “(bb) 3 percent.

4 “(ii) AGENCY-SPECIFIC FEE.—

5 “(I) IN GENERAL.—An executive  
6 agency shall charge the standard fee  
7 established by the Administrator  
8 under clause (i) for a grant of a real  
9 property interest unless, not later  
10 than 90 days after the date on which  
11 the Administrator publishes the  
12 amount of the finalized initial fee  
13 under clause (i)(II)(cc), the executive  
14 agency establishes an agency-specific  
15 fee in an amount that is equal to the  
16 average fee charged by the executive  
17 agency for the placement of a commu-  
18 nications facility installation during  
19 the most recent 3-year period.

20 “(II) PUBLIC COMMENT.—Dur-  
21 ing the process of establishing an  
22 agency-specific fee under subclause  
23 (I), an executive agency shall—

1                   “(aa) make a description of  
2                   the data on which the fee is  
3                   based publically available; and

4                   “(bb) allow opportunity for  
5                   public comment.

6                   “(iii) ENTIRETY OF FEES.—The Ad-  
7                   ministrator or an executive agency may not  
8                   charge any additional fee for the grant of  
9                   a real property interest for the placement  
10                  of a communications facility installation  
11                  other than what has been established in  
12                  the standard fee under clause (i) or an  
13                  agency-specific fee established under clause  
14                  (ii).

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

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

1           appropriations Acts, to the executive agen-  
2           cy to cover the cost of granting the real  
3           property interest.

4           “(3) MASTER CONTRACTS FOR COMMUNICA-  
5           TIONS FACILITY INSTALLATIONS.—

6           “(A) IN GENERAL.—Notwithstanding sec-  
7           tion 704 of the Telecommunications Act of  
8           1996 or any other provision of law, the Admin-  
9           istrator, in consultation with the head of each  
10          covered agency, shall—

11           “(i) not later than 60 days after the  
12          date of enactment of this subsection, de-  
13          velop and adopt 1 or more master applica-  
14          tion forms and standard contracts, includ-  
15          ing lease and easement contracts, for all  
16          executive agencies, that shall govern the  
17          placement of a communications facility in-  
18          stallation to, in, over, or on a building or  
19          other property owned by the Federal Gov-  
20          ernment;

21           “(ii) in developing the master applica-  
22          tion forms and standard contracts under  
23          subparagraph (A)—

24           “(I) include in each master appli-  
25          cation form or standard contract the



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

4 “(II) standardize the treatment  
5 of—

6 “(aa) the placement of a  
7 communications facility installa-  
8 tion to, in, over, or on the roof-  
9 top or facade of a building or in-  
10 side a building;

11 “(bb) the technology used in  
12 connection with a communica-  
13 tions facility installation placed  
14 on a Federal building or other  
15 property; and

16 “(cc) any other key issues  
17 the Administrator considers ap-  
18 propriate;

19 “(iii) not later than 30 days after the  
20 date on which the Administrator adopts  
21 the master application forms and standard  
22 contracts under clause (i), publish the  
23 master application forms and standard  
24 contracts in the Federal Register; and

1           “(iv) direct each executive agency to  
2 begin accepting the master application  
3 forms and standard contracts from appli-  
4 cants not later than 30 days after the date  
5 on which the Administrator adopts the  
6 master application forms and standard  
7 contracts under clause (i).

8           “(B) APPLICABILITY.—

9           “(i) IN GENERAL.—Except as pro-  
10 vided in clause (ii), the master application  
11 forms and standard contracts developed by  
12 the Administrator under subparagraph  
13 (A)(i) shall apply to each building or other  
14 property owned by the Federal Govern-  
15 ment.

16           “(ii) EXCEPTION.—If the Adminis-  
17 trator determines that the master applica-  
18 tion forms and standard contracts devel-  
19 oped under subparagraph (A)(i) are not  
20 adequate for a specific building or other  
21 property, the Administrator shall—

22           “(I) not later than 10 days after  
23 the date on which the Administrator  
24 makes the determination, provide  
25 written notification to the applicant,

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

5                   “(II) work in coordination with  
6                   the heads of the appropriate agencies  
7                   to address the inadequacies and pro-  
8                   vide, not later than 60 days after the  
9                   date on which the notification was  
10                  provided under subclause (I), an ade-  
11                  quate application form or contract to  
12                  the applicant.

13                  “(C) NEGOTIATION AND APPROVAL.—If  
14                  the Administrator fails to adopt master applica-  
15                  tion forms and standard contracts as required  
16                  under subparagraph (A)(i) during the 1-year  
17                  period beginning on the date of enactment of  
18                  the Streamlining and Investing in Broadband  
19                  Infrastructure Act, beginning on the day after  
20                  the expiration of that period and until the date  
21                  on which the Administrator adopts such forms  
22                  and contracts—

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

1           ing application form or contract with the  
2           executive agency; and

3                   “(ii) the executive agency shall accept  
4           the existing application form or contract.

5                   “(D) ESCALATION AND REVIEW.—Not  
6           later than 60 days after the date of enactment  
7           of the Streamlining and Investing in Broadband  
8           Infrastructure Act, each executive agency shall  
9           establish a supervisory review process under  
10          which an executive working group or established  
11          agency executive with negotiation and approval  
12          authority shall review any communications facil-  
13          ity installation application, lease, or easement if  
14          an applicant requests such review.

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

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

1 years after the date of enactment of that Act, the  
2 Administrator shall submit to the Committee on  
3 Commerce, Science, and Transportation of the Sen-  
4 ate and the Committee on Energy and Commerce of  
5 the House of Representatives a report that de-  
6 scribes, with respect to each executive agency—

7 “(A) the number of sites sought in applica-  
8 tions for the placement of a communications fa-  
9 cility installation, including upgrades and col-  
10 locations;

11 “(B) the number of sites approved; and

12 “(C) the number of sites completed.”.

13 (b) SAVINGS PROVISION.—Notwithstanding the  
14 amendment made by subsection (a), an executive agency  
15 may make a grant of a real property interest and may  
16 collect fees in accordance with subsection (b) of section  
17 6409 of the Middle Class Tax Relief and Job Creation  
18 Act of 2012 (47 U.S.C. 1455(b)) (as in effect on the day  
19 before the date of enactment of this Act) until the effective  
20 date of the regulations issued by the head of the executive  
21 agency to carry out the amendment made by subsection  
22 (a).

○