

116TH CONGRESS
2D SESSION

H. R. 7205

To facilitate the installation of broadband infrastructure, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 15, 2020

Ms. ESHOO (for herself and Mr. MCKINLEY) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

To facilitate the installation of broadband infrastructure, 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 “Nationwide Dig Once
5 Act of 2020”.

6 **SEC. 2. BROADBAND INFRASTRUCTURE DEPLOYMENT.**

7 (a) DEFINITIONS.—In this section:

8 (1) APPROPRIATE STATE AGENCY.—The term
9 “appropriate State agency” means a State govern-
10 mental agency that is recognized by the executive

1 branch of the State as having the experience nec-
2 essary to evaluate and facilitate the installation and
3 operation of broadband infrastructure within the
4 State.

5 (2) BROADBAND.—The term “broadband” has
6 the meaning given the term “advanced telecommuni-
7 cations capability” in section 706 of the Tele-
8 communications Act of 1996 (47 U.S.C. 1302).

9 (3) BROADBAND CONDUIT.—The term
10 “broadband conduit” means a conduit or innerduct
11 for fiber optic cables (or successor technology of
12 greater quality and speed) that supports the provi-
13 sion of broadband.

14 (4) BROADBAND INFRASTRUCTURE.—The term
15 “broadband infrastructure” means any buried or un-
16 derground facility and any wireless or wireline con-
17 nection that enables the provision of broadband.

18 (5) BROADBAND PROVIDER.—The term
19 “broadband provider” means an entity that provides
20 broadband to any person or facilitates provision of
21 broadband to any person, including, with respect to
22 such entity—

23 (A) a corporation, company, association,
24 firm, partnership, nonprofit organization, or
25 any other private entity;

1 (B) a State or local broadband provider;

2 (C) an Indian Tribe; and

3 (D) a partnership between any of the enti-
4 ties described in subparagraphs (A), (B), and
5 (C).

6 (6) COVERED HIGHWAY CONSTRUCTION
7 PROJECT.—

8 (A) IN GENERAL.—The term “covered
9 highway construction project” means, without
10 regard to ownership of a highway, a project to
11 construct a new highway or an additional lane
12 for an existing highway, to reconstruct an exist-
13 ing highway, or new construction, including for
14 a paved shoulder.

15 (B) EXCLUSIONS.—The term “covered
16 highway construction project” excludes any
17 project—

18 (i) awarded before the date on which
19 regulations required under subsection (b)
20 take effect;

21 (ii) that does not include work beyond
22 the edge of pavement or current paved
23 shoulder; or

24 (iii) that does not require excavation.

1 (7) DIG ONCE REQUIREMENT.—The term “dig
2 once requirement” means a requirement designed to
3 reduce the cost and accelerate the deployment of
4 broadband by minimizing the number and scale of
5 repeated excavations for the installation and mainte-
6 nance of broadband conduit or broadband infrastruc-
7 ture in rights-of-way.

8 (8) INDIAN TRIBE.—The term “Indian Tribe”
9 has the meaning given such term in section 4(e) of
10 the Indian Self-Determination and Education Assist-
11 ance Act (25 U.S.C. 5304(e)).

12 (9) NTLA ADMINISTRATOR.—The term “NTLA
13 Administrator” means the Assistant Secretary of
14 Commerce for Communications and Information.

15 (10) SECRETARY.—The term “Secretary”
16 means the Secretary of Transportation.

17 (11) STATE.—The term “State” has the mean-
18 ing given such term in section 101 of title 23,
19 United States Code.

20 (12) STATE OR LOCAL BROADBAND PRO-
21 VIDER.—The term “State or local broadband pro-
22 vider” means a State or political subdivision thereof,
23 or any agency, authority, or instrumentality of a
24 State or political subdivision thereof, that provides

1 broadband to any person or facilitates the provision
2 of broadband to any person in that State.

3 (13) TRIBAL GOVERNMENT.—The term “Tribal
4 government” means the recognized governing body
5 of an Indian Tribe or any agency, authority, or in-
6 strumentality of such governing body or such Indian
7 Tribe.

8 (b) DIG ONCE REQUIREMENT.—To facilitate the in-
9 stallation of broadband infrastructure, the Secretary shall,
10 not later than 9 months after the date of enactment of
11 this Act, promulgate regulations to ensure that each State
12 that receives funds under chapter 1 of title 23, United
13 States Code, meets the following requirements:

14 (1) BROADBAND PLANNING.—The State depart-
15 ment of transportation, in consultation with appro-
16 priate State agencies, shall—

17 (A) identify a broadband coordinator, who
18 may have additional responsibilities in the State
19 department of transportation or in another
20 State agency, that is responsible for facilitating
21 the broadband infrastructure right-of-way ef-
22 forts within the State; and

23 (B) review existing State broadband plans,
24 including existing dig once requirements of the
25 State, municipal governments incorporated

1 under State law, and Tribal governments within
2 the State, to determine opportunities to coordi-
3 nate projects occurring within or across high-
4 way rights-of-way with planned broadband in-
5 frastructure projects.

6 (2) NOTICE OF PLANNED CONSTRUCTION FOR
7 BROADBAND PROVIDERS.—

8 (A) NOTICE.—The State department of
9 transportation, in consultation with appropriate
10 State agencies, shall establish a process—

11 (i) for the registration of broadband
12 providers that seek to be included in the
13 advance notification of, and opportunity to
14 participate in, broadband infrastructure
15 right-of-way facilitation efforts within the
16 State; and

17 (ii) to electronically notify all
18 broadband providers registered under
19 clause (i)—

20 (I) of the State transportation
21 improvement program on at least an
22 annual basis; and

23 (II) of projects within the high-
24 way right-of-way for which Federal

1 funding is expected to be obligated in
2 the subsequent fiscal year.

3 (B) WEBSITE.—A State department of
4 transportation shall be considered to meet the
5 requirements of subparagraph (A) if it pub-
6 lishes to a public website—

7 (i) the State transportation improve-
8 ment program on at least an annual basis;
9 and

10 (ii) projects within the highway right-
11 of-way for which Federal funding is ex-
12 pected to be obligated in the subsequent
13 fiscal year.

14 (C) COORDINATION.—The State depart-
15 ment of transportation, in consultation with ap-
16 propriate State agencies, shall establish a proc-
17 ess for a broadband provider to commit to in-
18 stallng broadband conduit or broadband infra-
19 structure as part of any project.

20 (3) REQUIRED INSTALLATION OF CONDUIT.—

21 (A) IN GENERAL.—The State department
22 of transportation shall install broadband con-
23 duit, in accordance with this paragraph, except
24 as described in subparagraph (F), as part of
25 any covered highway construction project, un-

1 less a broadband provider has committed to in-
2 stall broadband conduit or broadband infra-
3 structure as part of such project in a process
4 described under paragraph (2)(C).

5 (B) INSTALLATION REQUIREMENTS.—The
6 State department of transportation shall ensure
7 that—

8 (i) an appropriate number of
9 broadband conduits, as determined in con-
10 sultation with the appropriate State agen-
11 cies, are installed along the highway of a
12 covered highway construction project to ac-
13 commodate multiple broadband providers,
14 with consideration given to the availability
15 of existing conduits;

16 (ii) the size of each such conduit is
17 consistent with industry best practices and
18 is sufficient to accommodate potential de-
19 mand, as determined in consultation with
20 the appropriate State agencies;

21 (iii) hand holes and manholes nec-
22 essary for fiber access and pulling with re-
23 spect to such conduit are placed at inter-
24 vals consistent with standards determined
25 in consultation with the appropriate State

1 agencies (which may differ by type of road,
2 topologies, and rurality) and consistent
3 with safety requirements;

4 (iv) each broadband conduit installed
5 pursuant to this paragraph includes a pull
6 tape and is capable of supporting fiber
7 optic cable placement techniques consistent
8 with best practices; and

9 (v) is placed at a depth consistent
10 with requirements of the covered highway
11 construction project and best practices and
12 that, in determining the depth of place-
13 ment, consideration is given to the location
14 of existing utilities and cable separation re-
15 quirements of State and local electrical
16 codes.

17 (C) GUIDANCE FOR THE INSTALLATION OF
18 BROADBAND CONDUIT.—The Secretary, in con-
19 sultation with the NTIA Administrator, shall
20 issue guidance for best practices related to the
21 installation of broadband conduit as described
22 in this paragraph and of conduit and similar in-
23 frastructure for intelligent transportation sys-
24 tems (as such term is defined in section 501 of
25 title 23, United States Code) that may utilize

1 broadband conduit installed pursuant to this
2 paragraph.

3 (D) ACCESS.—

4 (i) IN GENERAL.—The State depart-
5 ment of transportation shall ensure that
6 any requesting broadband provider has ac-
7 cess to each broadband conduit installed
8 pursuant to this paragraph, on a competi-
9 tively neutral and nondiscriminatory basis,
10 and in accordance with State permitting,
11 licensing, leasing, or other similar laws and
12 regulations.

13 (ii) FEE SCHEDULE.—The State de-
14 partment of transportation, in consultation
15 with appropriate State agencies, shall pub-
16 lish a fee schedule for a broadband pro-
17 vider to access conduit installed pursuant
18 to this paragraph. Fees in such schedule—

19 (I) shall be consistent with the
20 fees established pursuant to section
21 224 of the Communications Act of
22 1934 (47 U.S.C. 224);

23 (II) may vary by topography, lo-
24 cation, type of road, rurality, and

1 other factors in the determination of
2 the State; and

3 (III) may be updated not more
4 frequently than annually.

5 (iii) IN-KIND COMPENSATION.—The
6 State department of transportation may
7 negotiate in-kind compensation with any
8 broadband provider requesting access to
9 broadband conduit installed under the pro-
10 visions of this paragraph as a replacement
11 for part or all of, but not to exceed, the
12 relevant fee in the fee schedule described
13 in clause (ii).

14 (iv) SAFETY CONSIDERATIONS.—The
15 State department of transportation shall
16 require of broadband providers a process
17 for safe access to the highway right-of-way
18 during installation and on-going mainte-
19 nance of the broadband fiber optic cables
20 including a traffic control safety plan.

21 (v) COMMUNICATION.—A broadband
22 provider with access to the conduit in-
23 stalled pursuant to this subsection shall
24 notify and receive permission from the rel-
25 evant agencies of State responsible for the

1 installation of such broadband conduit
2 prior to accessing any highway or highway
3 right-of-way.

4 (E) TREATMENT OF PROJECTS.—Notwith-
5 standing any other provision of law, broadband
6 conduit and broadband infrastructure installa-
7 tion projects under this paragraph shall comply
8 with section 113(a) of title 23, United States
9 Code.

10 (F) WAIVER AUTHORITY.—

11 (i) IN GENERAL.—A State department
12 of transportation may waive the required
13 installation of broadband conduit for part
14 or all of any covered highway construction
15 project under this paragraph if, in the de-
16 termination of the State—

17 (I) broadband infrastructure, ter-
18 restrial broadband infrastructure, aer-
19 ial broadband fiber cables, or
20 broadband conduit is present near a
21 majority of the length of the covered
22 highway construction project;

23 (II) the installation of conduit in-
24 creases overall costs of a covered high-

1 way construction project by 1.5 per-
2 cent or greater;

3 (III) the installation of
4 broadband conduit associated with
5 covered highway construction project
6 will not be utilized or connected to fu-
7 ture broadband infrastructure in the
8 next 20 years, in the determination of
9 the State department of transpor-
10 tation, in consultation with appro-
11 priate State agencies and potentially
12 affected local governments and Tribal
13 governments;

14 (IV) the requirements of this
15 paragraph would require installation
16 of conduit redundant with a dig once
17 requirement of a local or Tribal gov-
18 ernment;

19 (V) there exists a circumstance
20 involving force majeure; or

21 (VI) other relevant factors, as de-
22 termined by the Secretary in consulta-
23 tion with the NTIA Administrator
24 through regulation, warrant a waiver.

1 (ii) CONTENTS OF WAIVER.—A waiver
2 authorized under this subparagraph
3 shall—

4 (I) identify the covered highway
5 construction project; and

6 (II) include a brief description of
7 the determination of the State for
8 issuing such waiver.

9 (iii) AVAILABILITY OF WAIVER.—A
10 waiver authorized under this subparagraph
11 shall be included in the plans, specifica-
12 tions, and estimates for the associated
13 project, as long as such info is publicly
14 available.

15 (4) PRIORITY.—If a State provides for the in-
16 stallation of broadband infrastructure in the right-
17 of-way of an applicable Federal-aid highway project
18 under this subsection, the State department of
19 transportation, along with appropriate State agen-
20 cies, shall carry out appropriate measures to ensure
21 that any existing broadband providers are afforded
22 equal opportunity access, as compared to other
23 broadband providers, with respect to the program
24 under this subsection.

1 (5) CONSULTATION.—In promulgating regula-
2 tions required by this subsection or to implement
3 any part of this section, the Secretary shall con-
4 sult—

5 (A) the NTIA Administrator;

6 (B) the Federal Communications Commis-
7 sion;

8 (C) State departments of transportation;

9 (D) appropriate State agencies;

10 (E) agencies of local governments respon-
11 sible for transportation and rights-of-way, utili-
12 ties, and telecommunications and broadband;

13 (F) Tribal governments;

14 (G) broadband providers; and

15 (H) manufacturers of optical fiber, con-
16 duit, pull tape, and related items.

17 (6) PROHIBITION ON UNFUNDED MANDATE.—

18 (A) IN GENERAL.—This subsection shall
19 apply only to activities for which Federal obli-
20 gations or expenditures are initially approved
21 on or after the date regulations required under
22 this subsection take effect.

23 (B) NO MANDATE.—Absent an available
24 and dedicated Federal source of funding—

1 (i) nothing in this subsection estab-
2 lishes a mandate or requirement that a
3 State install broadband conduit in a high-
4 way right-of-way; and

5 (ii) nothing in paragraph (3) shall es-
6 tablish any requirement for a State.

7 (7) RULES OF CONSTRUCTION.—

8 (A) STATE LAW.—Nothing in this sub-
9 section shall be construed to require a State to
10 install or allow the installation of broadband
11 conduit or broadband infrastructure—

12 (i) that is otherwise inconsistent with
13 what is allowable under State law; or

14 (ii) where the State lacks the author-
15 ity or property easement necessary for
16 such installation.

17 (B) NO REQUIREMENT FOR INSTALLATION
18 OF MOBILE SERVICES EQUIPMENT.—Nothing in
19 this section shall be construed to require a
20 State, a municipal government incorporated
21 under State law, or an Indian Tribe to install
22 or allow for the installation of equipment essen-
23 tial for the provision of commercial mobile serv-
24 ices (as defined in section 332(d) of the Com-
25 munications Act of 1934 (47 U.S.C. 332(d)))

1 or commercial mobile data service (as defined in
2 section 6001 of the Middle Class Tax Relief
3 and Job Creation Act of 2012 (47 U.S.C.
4 1401)), other than broadband conduit and asso-
5 ciated equipment described in paragraph
6 (3)(B).

7 (c) RELATION TO STATE DIG ONCE REQUIRE-
8 MENTS.—Nothing in subsection (b) or any regulations
9 promulgated under subsection (b) shall be construed to
10 alter or supersede any provision of a State law or regula-
11 tion that provides for a dig once requirement that includes
12 similar or more stringent requirements to the provisions
13 of subsection (b) and any regulations promulgated under
14 this subsection (b).

15 (d) DIG ONCE FUNDING TASK FORCE.—

16 (1) ESTABLISHMENT.—There is established an
17 independent task force on funding the nationwide
18 dig once requirement described in this section to be
19 known as the “Dig Once Funding Task Force”
20 (hereinafter referred to as the “Task Force”).

21 (2) DUTIES.—The duties of the Task Force
22 shall be to—

23 (A) estimate the annual cost for imple-
24 menting and administering a nationwide dig
25 once requirement; and

1 (B) propose and evaluate options for fund-
2 ing a nationwide dig once requirement described
3 in this section that includes—

4 (i) a discussion of the role and poten-
5 tial share of costs of—

6 (I) the Federal Government;

7 (II) State, local, and Tribal gov-
8 ernments; and

9 (III) broadband providers; and

10 (ii) consideration of the role of exist-
11 ing dig once requirements of State, local,
12 and Tribal governments and private
13 broadband investment, with a goal to not
14 discourage or disincentivize such dig once
15 requirements or such investment.

16 (3) REPORTS.—

17 (A) INTERIM REPORT AND BRIEFING.—

18 Not later than 9 months after the date of en-
19 actment of this Act, the Task Force shall sub-
20 mit an interim report to Congress and provide
21 briefings for Congress on the findings of the
22 Task Force.

23 (B) FINAL REPORT.—Not later than 12
24 months after the date of enactment of this Act,

1 the Task Force shall submit a final report to
2 Congress on the findings of the Task Force.

3 (4) MEMBERS.—

4 (A) APPOINTMENTS.—The Task Force
5 shall consist of 14 members, consisting of—

6 (i) the 2 co-chairs described in sub-
7 paragraph (B);

8 (ii) 6 members jointly appointed by
9 the Speaker and minority leader of the
10 House of Representatives, in consultation
11 with the respective Chairs and Ranking
12 Members of the—

13 (I) the Committee on Transpor-
14 tation and Infrastructure of the
15 House of Representatives;

16 (II) the Committee on Energy
17 and Commerce of the House of Rep-
18 resentatives; and

19 (III) the Committee on Appro-
20 priations of the House of Representa-
21 tives; and

22 (iii) 6 members jointly appointed by
23 the majority leader and minority leader of
24 the Senate, in consultation with the respec-
25 tive Chairs and Ranking Members of—

1 (I) the Committee on Environ-
2 ment and Public Works of the Senate;

3 (II) the Committee on Com-
4 merce, Science, and Transportation of
5 the Senate; and

6 (III) the Committee on Appro-
7 priations of the Senate.

8 (B) CO-CHAIRS.—The Task Force shall be
9 co-chaired by the Secretary and the NTIA Ad-
10 ministrator, or their designees.

11 (C) COMPOSITION.—The Task Force shall
12 include at least—

13 (i) 1 representative from a State de-
14 partment of transportation;

15 (ii) 1 representative from a local gov-
16 ernment;

17 (iii) 1 representative from a Tribal
18 government;

19 (iv) 1 representative from a
20 broadband provider;

21 (v) 1 representative from a State or
22 local broadband provider; and

23 (vi) 1 representative from a public in-
24 terest organization.

1 (D) APPOINTMENT DEADLINE.—Members
2 shall be appointed to the Task Force not later
3 than 60 days after the date of enactment of
4 this Act.

5 (E) EFFECT OF LACK OF APPOINTMENT
6 BY APPOINTMENT DATE.—If 1 or more appoint-
7 ments required under subparagraph (A) is not
8 made by the appointment date specified in sub-
9 paragraph (D), the authority to make such ap-
10 pointment or appointments shall expire and the
11 number of members of the Task Force shall be
12 reduced by the number equal to the number of
13 appointments so expired.

14 (F) TERMS.—Members shall be appointed
15 for the life of the Task Force. A vacancy in the
16 Task Force shall not affect its powers and shall
17 be filled in the same manner as the initial ap-
18 pointment was made.

19 (5) CONSULTATIONS.—In carrying out the du-
20 ties required under this subsection, the Task Force
21 shall consult, at a minimum—

22 (A) the Federal Communications Commis-
23 sion;

24 (B) agencies of States including—

1 (i) State departments of transpor-
2 tation; and

3 (ii) appropriate State agencies;

4 (C) agencies of local governments respon-
5 sible for transportation and rights of way, utili-
6 ties, and telecommunications and broadband;

7 (D) Tribal governments;

8 (E) broadband providers and other tele-
9 communications providers; and

10 (F) State or local broadband providers and
11 Tribal governments that act as broadband pro-
12 viders.

13 (6) ADDITIONAL PROVISIONS.—

14 (A) EXPENSES FOR NON-FEDERAL MEM-
15 BERS.—Non-Federal members of the Task
16 Force shall be allowed travel expenses, includ-
17 ing per diem in lieu of subsistence, at rates au-
18 thorized for employees under subchapter I of
19 chapter 57 of title 5, United States Code, while
20 away from their homes or regular places of
21 business in the performance of services for the
22 Task Force.

23 (B) STAFF.—Staff of the Task Force shall
24 comprise detailees with relevant expertise from
25 the Department of Transportation and the Na-

1 tional Telecommunications and Information Ad-
2 ministration, or another Federal agency the co-
3 chairpersons consider appropriate, with the con-
4 sent of the head of the Federal agency, and
5 such detailee shall retain the rights, status, and
6 privileges of his or her regular employment
7 without interruption.

8 (C) ADMINISTRATIVE ASSISTANCE.—The
9 Secretary and NTIA Administrator shall pro-
10 vide to the Task Force on a reimbursable basis
11 administrative support and other services for
12 the performance of the functions of the Task
13 Force.

14 (7) TERMINATION.—The Task Force shall ter-
15 minate not later than 90 days after issuance of the
16 final report required under paragraph (3)(B).

○