

117TH CONGRESS
1ST SESSION

S. 2398

To amend title 23, United States Code, to accommodate certain facilities within rights-of-way on Federal-aid highways.

IN THE SENATE OF THE UNITED STATES

JULY 20, 2021

Mr. OSSOFF introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend title 23, United States Code, to accommodate certain facilities within rights-of-way on Federal-aid highways.

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 “Sustainable Highways
5 Innovation Act”.

6 **SEC. 2. ACCOMMODATION OF CERTAIN FACILITIES WITHIN**
7 **ANY RIGHT-OF-WAY ON A FEDERAL-AID HIGH-**
8 **WAY.**

9 Section 109 of title 23, United States Code, is
10 amended—

1 (1) in subsection (1)—

2 (A) by striking paragraph (2);

3 (B) by striking the subsection designation
4 and all that follows through “In determining”
5 in paragraph (1) in the matter preceding sub-
6 paragraph (A) and inserting the following:

7 “(1) ACCOMMODATING UTILITY FACILITIES IN THE
8 RIGHT-OF-WAY.—

9 “(1) DEFINITIONS.—In this subsection:

10 “(A) RIGHT-OF-WAY.—The term ‘right-of-
11 way’ means any real property, or interest there-
12 in, acquired, dedicated, or reserved for the con-
13 struction, operation, and maintenance of a
14 highway.

15 “(B) UTILITY FACILITY.—

16 “(i) IN GENERAL.—The term ‘utility
17 facility’ means any privately, publicly, or
18 cooperatively owned line, facility, or system
19 for producing, transmitting, or distributing
20 communications, power, electricity, light,
21 heat, gas, oil, crude products, water,
22 steam, waste, storm water not connected
23 with highway drainage, or any other simi-
24 lar commodity, including any fire or police

1 signal system or street lighting system,
 2 that directly or indirectly serves the public.

3 “(ii) INCLUSIONS.—The term ‘utility
 4 facility’ includes—

5 “(I) alternative fueling infra-
 6 structure;

7 “(II) a renewable energy genera-
 8 tion facility;

9 “(III) electrical transmission and
 10 distribution infrastructure; and

11 “(IV) broadband infrastructure
 12 and conduit.

13 “(2) ACCOMMODATION.—In determining”; and
 14 (C) by adding at the end the following:

15 “(3) STATE APPROVAL.—A State, on behalf of
 16 the Secretary, may approve accommodating a utility
 17 facility described in paragraph (1)(B)(ii) within a
 18 right-of-way on a Federal-aid highway.”; and

19 (2) by adding at the end the following:

20 “(s) VEGETATION MANAGEMENT.—Notwithstanding
 21 any other provision of law, States are encouraged to imple-
 22 ment, or to enter into partnerships to implement, vegeta-
 23 tion management practices, such as increased mowing
 24 heights and planting native grasses and pollinator-friendly

1 habitats, along a right-of-way on a Federal-aid highway,
2 if the implementation of those practices—

3 “(1) is in the public interest; and

4 “(2) will not impair the highway or interfere

5 with the free and safe flow of traffic.”.

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