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S. 2866

To amend the Internal Revenue Code of 1986 to allow private activity bonds to be used for qualified broadband projects and to provide for tax credit payments to issuers of tax-exempt bonds used to finance broadband infrastructure projects.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 14, 2019

Mrs. CAPITO (for herself and Ms. HASSAN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to allow private activity bonds to be used for qualified broadband projects and to provide for tax credit payments to issuers of tax-exempt bonds used to finance broadband infrastructure projects.

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 Fi-
5 nancial Flexibility Act”.

1 **SEC. 2. PRIVATE ACTIVITY BONDS FOR QUALIFIED**
 2 **BROADBAND PROJECTS.**

3 (a) IN GENERAL.—Section 142(a) of the Internal
 4 Revenue Code of 1986 is amended by striking “or” at the
 5 end of paragraph (14), by striking the period at the end
 6 of paragraph (15) and inserting “, or”, and by adding at
 7 the end the following new paragraph:

8 “(16) qualified broadband projects.”.

9 (b) QUALIFIED BROADBAND PROJECTS.—Section
 10 142 of such Code is amended by adding at the end the
 11 following new subsection:

12 “(n) QUALIFIED BROADBAND PROJECT.—

13 “(1) IN GENERAL.—For purposes of subsection
 14 (a)(16), the term ‘qualified broadband project’
 15 means any project which—

16 “(A) is designed solely to provide
 17 broadband service to 1 or more areas—

18 “(i) which are rural areas (as defined
 19 in section 343(a)(13) of the Consolidated
 20 Farm and Rural Development Act (7
 21 U.S.C. 1991(a)(13) without regard to sub-
 22 paragraph (B) or (C) thereof), and

23 “(ii) in which more than 50 percent of
 24 residential households do not have access
 25 to fixed, terrestrial broadband service
 26 which delivers at least 10 megabits per

1 second downstream and at least 1 megabit
2 service upstream, and

3 “(B) results in gigabit capable Internet ac-
4 cess to residential or commercial locations but
5 only if at least 90 percent of the residential or
6 commercial locations provided such access
7 under the project are locations where, before
8 the project, a broadband service provider—

9 “(i) did not provide service, or

10 “(ii) did not provide service which
11 meets the minimum speed requirements
12 described in subparagraph (A)(ii).

13 “(2) NOTICE TO BROADBAND PROVIDERS.—A
14 project shall not be treated as a qualified broadband
15 project unless, before the issue date of any issue the
16 proceeds of which are to be used to fund the project,
17 the issuer—

18 “(A) notifies each broadband service pro-
19 vider providing broadband service in the area
20 within which broadband services are to be pro-
21 vided under the project of the project and its
22 intended scope,

23 “(B) includes in such notice a request for
24 information from each such provider with re-
25 spect to the provider’s ability to deploy, man-

1 age, and maintain a broadband network capable
 2 of providing gigabit capable Internet access to
 3 residential or commercial locations, and

4 “(C) allows each such provider at least 90
 5 days to respond to such notice and request.”.

6 (c) PARTIAL EXCEPTION FROM VOLUME CAP.—

7 (1) IN GENERAL.—Section 146(g) of the Inter-
 8 nal Revenue Code of 1986 is amended by striking
 9 “and” at the end of paragraph (3), by striking the
 10 period at the end of paragraph (4) and inserting “,
 11 and”, and by inserting immediately after paragraph
 12 (4) the following new paragraph:

13 “(5) 75 percent of any exempt facility bond
 14 issued as part of an issue described in paragraph
 15 (16) of section 142(a) (relating to qualified
 16 broadband projects).”.

17 (2) GOVERNMENT-OWNED PROJECTS.—The last
 18 sentence of section 146(g) of such Code is amended
 19 by striking “Paragraph (4)” and inserting “Para-
 20 graphs (4) and (5)”.

21 (d) EFFECTIVE DATE.—The amendments made by
 22 this section shall apply to obligations issued in calendar
 23 years beginning after the date of the enactment of this
 24 Act.

1 **SEC. 3. CREDIT FOR BROADBAND INFRASTRUCTURE**

2 **BONDS ALLOWED TO ISSUERS.**

3 (a) IN GENERAL.—Subchapter B of chapter 65 of the
4 Internal Revenue Code of 1986 is amended by inserting
5 after section 6430 the following new section:

6 **“SEC. 6431. CREDIT FOR BROADBAND INFRASTRUCTURE**

7 **BONDS ALLOWED TO ISSUER.**

8 “(a) IN GENERAL.—In the case of a broadband infra-
9 structure bond, the issuer of such bond shall be allowed
10 a credit with respect to each interest payment under such
11 bond which shall be payable by the Secretary as provided
12 in subsection (b).

13 “(b) PAYMENT OF CREDIT.—The Secretary shall pay
14 (contemporaneously with each interest payment date
15 under such bond) to the issuer of such bond (or to any
16 person who makes such interest payments on behalf of the
17 issuer) 35 percent of the interest payable under such bond
18 on such date.

19 “(c) BROADBAND INFRASTRUCTURE BOND.—For
20 purposes of this section—

21 “(1) IN GENERAL.—The term ‘broadband infra-
22 structure bond’ means any obligation (other than a
23 private activity bond)—

24 “(A) the interest on which would (but for
25 this section) be excludable from gross income
26 under section 103,

1 “(B) which is issued by a qualified issuer,

2 “(C) which is issued as part of an issue

3 with respect to which—

4 “(i) the requirements of paragraph
5 (2) are met,

6 “(ii) all of the property to be financed
7 by the net proceeds of the issue is to be
8 owned by a governmental unit (within the
9 meaning of section 142(b)(1)), and

10 “(iii) the aggregate face amount of
11 bonds issued pursuant to the issue, when
12 added to the aggregate face amount of
13 broadband infrastructure bonds previously
14 issued by the issuing authority during the
15 calendar year, does not exceed such issuing
16 authority’s allocation of its State’s volume
17 cap under subsection (d) for such year,
18 and

19 “(D) which the issuer designates (at such
20 time and in such manner as the Secretary may
21 prescribe) as an obligation to which this section
22 applies.

23 “(2) SPECIAL RULES RELATING TO EXPENDI-
24 TURES.—

“(A) IN GENERAL.—An issue shall be treated as meeting the requirements of this paragraph if, as of the date of issuance, the issuer reasonably expects—

“(i) 100 percent of the available project proceeds to be spent in connection with 1 or more qualified broadband projects within the 3-year period beginning on such date of issuance, and

“(ii) a binding commitment with a third party to spend at least 10 percent of such available project proceeds will be incurred within the 6-month period beginning on such date of issuance.

“(B) FAILURE TO SPEND REQUIRED AMOUNT OF BOND PROCEEDS WITHIN 3 YEARS.—

“(i) IN GENERAL.—To the extent that less than 100 percent of the available project proceeds of the issue are expended by the close of the expenditure period, the issuer shall redeem all of the nonqualified bonds within 90 days after the end of such period. For purposes of this paragraph, the amount of the nonqualified bonds required

to be redeemed shall be determined in the same manner as under section 142.

“(ii) EXPENDITURE PERIOD.—For purposes of this section, the term ‘expenditure period’ means, with respect to any issue, the 3-year period beginning on the date of issuance. Such term shall include any extension of such period under clause (iii).

“(iii) EXTENSION OF PERIOD.—Upon submission of a request prior to the expiration of the expenditure period (determined without regard to any extension under this clause), the Secretary may extend such period if the issuer establishes that the failure to expend the proceeds within the original expenditure period is due to reasonable cause and the expenditures in connection with 1 or more qualified broadband projects will continue to proceed with due diligence.

“(C) REIMBURSEMENT.—For purposes of this subtitle, available project proceeds of an issue shall be treated as spent in connection with 1 or more qualified broadband projects if

1 such proceeds are used to reimburse the issuer
2 for amounts paid in connection with such
3 projects after the date that an allocation of a
4 State's volume cap under subsection (d) has
5 been made with respect to such issue, but only
6 if-

7 “(i) prior to the payment of the origi-
8 nal expenditure, the issuer declared its in-
9 tent to reimburse such expenditure with
10 the proceeds of such issue,

11 “(ii) not later than 60 days after pay-
12 ment of the original expenditure, the issuer
13 adopts an official intent to reimburse the
14 original expenditure with such proceeds,
15 and

16 “(iii) the reimbursement is made not
17 later than 18 months after the date the
18 original expenditure is paid.

19 “(3) LIMITATION ON ISSUE PRICE.—An obliga-
20 tion shall not be treated as a broadband infrastruc-
21 ture bond if the issue price has more than a de mini-
22 mis amount (determined under rules similar to the
23 rules of section 1273(a)(3)) of premium over the
24 stated principal amount of the obligation.

1 “(4) AVAILABLE PROJECT PROCEEDS.—For
 2 purposes of this subsection, the term ‘available
 3 project proceeds’ means, with respect to any issue,
 4 the sum of—

5 “(A) the excess of—

6 “(i) the proceeds from the sale of an
 7 issue, over

8 “(ii) the issuance costs financed by
 9 the issue (to the extent that such costs do
 10 not exceed 2 percent of such proceeds),
 11 plus

12 “(B) the proceeds from any investment of
 13 the excess described in subparagraph (A).

14 “(5) QUALIFIED BROADBAND PROJECT.—For
 15 purposes of this subsection, the term ‘qualified
 16 broadband project’ has the meaning given such term
 17 by section 142(n).

18 “(d) LIMITATION ON AMOUNT OF BONDS DES-
 19 IGNATED.—

20 “(1) NATIONAL LIMITATION.—There is a na-
 21 tional broadband infrastructure bond limitation for
 22 each calendar year of \$2,500,000,000.

23 “(2) STATE VOLUME CAP; ALLOCATION.—For
 24 purposes of this subsection, the broadband infra-
 25 structure bonds volume cap of a State for any cal-

1 endar year is the portion of the national broadband
2 infrastructure bond limitation under paragraph (1)
3 equal to the sum of—

4 “(A) \$25,000,000, plus

5 “(B) the amount which bears the same
6 ratio to \$1,250,000,000 as the—

7 “(i) number of individuals in such
8 State who reside in rural areas (as defined
9 in section 343(a)(13) of the Consolidated
10 Farm and Rural Development Act (7
11 U.S.C. 1991(a)(13) without regard to sub-
12 paragraph (B) or (C) thereof), bears to

13 “(ii) the total number of individuals
14 living in such rural areas in all States.

15 “(3) ALLOCATION OF VOLUME CAP.—

16 “(A) IN GENERAL.—For purposes of this
17 section—

18 “(i) except as provided in subpara-
19 graph (C), 50 percent of the State
20 broadband infrastructure bonds volume cap
21 of a State for any calendar year shall be
22 allocated to qualified issuers that are not
23 agencies of the State in the amount deter-
24 mined under subparagraph (B), and

1 “(ii) the remaining 50 percent of such
2 volume cap shall be allocated to qualified
3 issuers in such manner as the State pro-
4 vides.

5 “(B) AMOUNT OF ALLOCATION.—

6 “(i) IN GENERAL.—The amount of
7 the State broadband infrastructure bonds
8 volume cap for any calendar year allocated
9 under this subparagraph to any qualified
10 issuer described in subparagraph (A)(i)
11 shall be equal to the amount which bears
12 the same ratio to the amount described in
13 subparagraph (A)(i) for such calendar year
14 as—

15 “(I) the number of individuals in
16 such State who reside in rural areas
17 (as defined in section 343(a)(13) of
18 the Consolidated Farm and Rural De-
19 velopment Act (7 U.S.C. 1991(a)(13)
20 without regard to subparagraph (B)
21 or (C) thereof) within the jurisdiction
22 of such qualified issuer, bears to

23 “(II) the total number of individ-
24 uals living in such rural areas in the
25 State.

1 “(ii) SPECIAL RULE FOR OVERLAP-
 2 PING JURISDICTIONS.—For purposes of
 3 clause (i)(I), if an area is within the juris-
 4 diction of 2 or more governmental units,
 5 such area shall be treated as only within
 6 the jurisdiction of the unit having jurisdic-
 7 tion over the smallest geographical area
 8 unless such unit agrees to surrender all or
 9 part of such jurisdiction for such calendar
 10 year to the unit with overlapping jurisdic-
 11 tion which has the next smallest geo-
 12 graphical area.

13 “(C) REALLOCATION.—The amount allo-
 14 cated under this paragraph to any qualified
 15 issuer may be reallocated by such issuer to the
 16 State for reallocation to other qualified issuers
 17 (including agencies of the State).

18 “(4) CARRYOVER OF UNUSED LIMITATION.—

19 “(A) IN GENERAL.—If, for any calendar
 20 year, a State’s broadband infrastructure bonds
 21 volume cap exceeds the amount of bonds issued
 22 during such year which are designated as
 23 broadband infrastructure bonds under sub-
 24 section (c)(1)(D) with respect to broadband
 25 projects within such State, the broadband infra-

1 structure bonds volume cap for such State for
2 the following calendar year shall be increased
3 by the amount of such excess.

4 “(B) LIMITATION ON CARRYOVER.—Any
5 carryforward of an excess amount may be car-
6 ried only to the first 2 years following the un-
7 used volume cap year. For purposes of the pre-
8 ceding sentence, a volume cap amount shall be
9 treated as used on a first-in first-out basis.

10 “(e) OTHER RULES AND DEFINITIONS.—

11 “(1) INTEREST INCLUDIBLE IN INCOME.—For
12 purposes of this title, interest on any broadband in-
13 frastructure bond shall be includible in gross income.

14 “(2) CREDIT NOT A FEDERAL GUARANTEE.—
15 For purposes of section 149(b), a broadband infra-
16 structure bond shall not be treated as Federally
17 guaranteed by reason of the credit allowed under
18 this section.

19 “(3) COORDINATION WITH SECTION 148.—

20 “(A) YIELD REDUCED BY CREDIT.—For
21 purposes of section 148, the yield on a
22 broadband infrastructure bond shall be deter-
23 mined by reducing the otherwise effective yield
24 by the amount of the credit allowed to the
25 issuer under this section.

1 “(B) INVESTMENT DURING EXTENSION PE-
 2 RIOD.—An issue shall not be treated as failing
 3 to meet the requirements of section 148 by rea-
 4 son of any investment of available project pro-
 5 ceeds during the expenditure period.

6 “(4) RURAL POPULATIONS.—For purposes of
 7 this section, the determination of the number of in-
 8 dividuals living in rural areas shall be made in con-
 9 sultation with the Secretary of Agriculture.

10 “(5) DEFINITIONS.—For purposes of this sec-
 11 tion—

12 “(A) QUALIFIED ISSUER.—The term
 13 ‘qualified issuer’ means a State or any political
 14 subdivision or instrumentality thereof having
 15 authority to issue private activity bonds.

16 “(B) STATE.—Notwithstanding section
 17 7701(a)(10), the term ‘State’ only includes the
 18 50 States.

19 “(f) REGULATIONS.—The Secretary may prescribe
 20 such regulations and other guidance as may be necessary
 21 or appropriate to carry out this section.”.

22 (b) CONFORMING AMENDMENTS.—

23 (1) Section 6401(b)(1) of the Internal Revenue
 24 Code of 1986 is amended by striking “under sub-
 25 parts A, B, D, and G of such part IV” and inserting

1 “under all subparts of such part IV other than such
2 subpart C”.

3 (2) The table of sections for subchapter B of
4 chapter 65 of such Code is amended by inserting
5 after the item related to section 6430 the following
6 new section:

“Sec. 6431. Credit for broadband infrastructure bonds allowed to issuer.”.

7 (c) GROSS-UP OF PAYMENT TO ISSUERS IN CASE OF
8 SEQUESTRATION.—The amount of any payment under
9 section 6431(b) of the Internal Revenue Code of 1986
10 made after the date of the enactment of this Act to which
11 sequestration applies shall be increased by the amount
12 necessary to preserve the full amount of such payment
13 payable to the issuer before sequestration. For purposes
14 of this subsection, the term “sequestration” means any
15 reduction in direct spending ordered in accordance with
16 a sequestration report prepared by the Director of the Of-
17 fice and Management and Budget pursuant to the Bal-
18 anced Budget and Emergency Deficit Control Act of 1985
19 or the Statutory Pay-As-You-Go Act of 2010.

20 (d) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to bonds issued in calendar years
22 beginning after the date of the enactment of this Act.

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