

116TH CONGRESS  
1ST SESSION

# 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.

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## 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

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## 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.—

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

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

10           “(ii) a binding commitment with a  
11 third party to spend at least 10 percent of  
12 such available project proceeds will be in-  
13 curred within the 6-month period begin-  
14 ning on such date of issuance.

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

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

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

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

10 “(iii) EXTENSION OF PERIOD.—Upon  
11 submission of a request prior to the expira-  
12 tion of the expenditure period (determined  
13 without regard to any extension under this  
14 clause), the Secretary may extend such pe-  
15 riod if the issuer establishes that the fail-  
16 ure to expend the proceeds within the  
17 original expenditure period is due to rea-  
18 sonable cause and the expenditures in con-  
19 nection with 1 or more qualified broadband  
20 projects will continue to proceed with due  
21 diligence.

22 “(C) REIMBURSEMENT.—For purposes of  
23 this subtitle, available project proceeds of an  
24 issue shall be treated as spent in connection  
25 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.

○