The Rural Broadband Financing Flexibility Act
Senator Maggie Hassan (D-NH) and Senator Shelley Moore Capito (R-WV)

Section-by-Section

Sec. 101. Private activity bonds for qualified broadband projects.

This section amends § 142 of the tax code to add qualified broadband projects, as defined above, to the list of projects for which qualified private activity bonds – specifically, "exempt facility bonds" – may be issued.

Notice to broadband providers: Prior to the issuance of any private activity bonds for qualified broadband projects, this section requires the bond issuer to provide notice to each broadband provider servicing the project area. This notice must request information relating to each provider's ability to deploy and maintain gigabit-capable broadband service in the area. Broadband providers must be given at least 90 days to responds to this request for information.

Partial exception from volume cap: This section exempts 75 percent of private activity bonds issued for non-government-owned qualified broadband projects and 100 percent of private activity bonds issued for government-owned qualified broadband projects from each state's private activity bond volume cap.

Sec. 102. Credit for broadband infrastructure bonds allowed to issuers.

This section creates, under § 54 of the tax code, taxable "broadband infrastructure bonds" that may be issued by state and local governments. These broadband infrastructure bonds are tax credit bonds for which state and local governments may, in lieu of tax credits, receive direct payments from the Treasury worth 35 percent of the interest payments made to bondholders.

Broadband infrastructure bonds are defined as bonds that are issued by state or local governments solely to finance government-owned qualified broadband projects, as defined above.

National and state volume caps: This section limits broadband infrastructure bonds, on a national basis, to $2.5 billion in issuances in each calendar year. Each of the fifty states are allocated $25 million in authority to issue broadband infrastructure bonds. The remaining $1.25 billion of the national volume cap is allocated among the states according to rural population, defined as each states' share of the national population who reside in rural areas, as defined in 7 U.S.C. 1991(a)(13)(A) and (D)-(I).

Each state is required to allocate 50 percent of its broadband infrastructure bond volume cap among local governments which have authority to issue private activity bonds. These local governments are allocated broadband infrastructure bonds in proportion to their share of their state's rural population, and may return unused volume cap to their states. Each state has discretion regarding use of the remaining 50 percent of its volume cap, including whether to further allocate bond authority to local governments.

If a state does not reach its volume cap in a given year, it may carry over the unused authority to issue broadband infrastructure bonds for up to two years.

Issuance rules: State and local governments are required to designate 100 percent of the proceeds of broadband infrastructure bond issuances for qualified broadband projects. Issuers must reasonably expect to fully spend 100 percent of proceeds within the 3-year period following the bond issuance. Upon request, the Treasury Secretary may grant issuers an extension of this 3-year expenditure period. Further, within 6 months of issuance, state and local governments must enter into binding commitments to spend at least 10 percent of proceeds.

Jointly formed local jurisdiction rules: Local governments which enter into agreements to jointly form jurisdictions with the authority to finance infrastructure projects may issue broadband infrastructure bonds under certain conditions. First, a jointly formed jurisdiction must be given bond issuance authority by its state. Second, by default, broadband infrastructure bonds are allocated to the smaller of overlapping local jurisdictions. However, if each of the smaller jurisdictions within a jointly formed jurisdiction agrees to give their bond authority to the larger jointly formed jurisdiction, then this jointly formed jurisdiction may issue broadband infrastructure bonds.

Sequestration rule: Full payments to state and local governments related to broadband infrastructure bonds are preserved in the event of sequestration.

Sec. 201. Investment credit for qualified broadband projects.

This section creates, under § 48D of the tax code, a 10 percent tax credit for investments in "qualified broadband projects."

Qualified broadband projects are defined as projects that provide gigabit-capable internet service:

1. Solely to rural areas, as defined in 7 U.S.C. 1991(a)(13)(A) and (D)-(I), in which more than 50 percent of residential households do not have access to fixed, terrestrial broadband service delivering at least 10 megabits per second downstream and at least 1 megabits per second upstream,

   and

2. Primarily to unserved residential or commercial locations not previously served by a broadband provider or to underserved locations that do not have broadband service delivering at least 10 megabits per second downstream and at least 1 megabits per second upstream. "Primarily" serving unserved and underserved locations means that 90 percent of the locations served by the project must be unserved or underserved.

Broadband project nominations and certifications: To be eligible for the broadband investment tax credit, projects must be nominated by a state or local government and be certified by the Treasury Department as satisfying requirements for qualified broadband projects.

This section directs the Treasury, in consultation with the Federal Communications Commission and Department of Agriculture, to establish a certification program within 180 days of the enactment of this legislation. Under this program, the Treasury receives project applications during an annual 60-day period and, in consultation with FCC and USDA, certifies projects as qualified broadband projects within 60 days of the close of the application period.

The applications considered by the Treasury are submitted by the states. These applications contain each project nominated by a given state and its localities, along with written assurances by nominating governments that each of its nominated projects are qualified broadband projects. Each project considered by the Treasury certification program must be nominated by a state or local government.

National and state limitations: This section limits broadband investment tax credit claims, on a national basis, to $500 million in each calendar year. Each of the fifty states are allocated $5 million in broadband investment tax credits. The remaining $250 million of the national limitation is allocated among the states according to rural population, defined as each states' share of the national population who reside in rural areas, as defined in 7 U.S.C. 1991(a)(13)(A) and (D)-(I). If a state does not reach its investment tax credit limitation in a given year, it may carry over the unused tax credits for up to two years.

Awards of investment tax credits: If, in a given year, the investment tax credits for which Treasury-certified qualified broadband projects are eligible exceed a given state's tax credit limitation, the state determines which of the certified projects receives tax credit awards. If, in a given year, the investment tax credits for which Treasury-certified qualified broadband projects are eligible do not exceed a given state's tax credit limitation, every certified project receives tax credit awards.

Qualified investments: The broadband investment tax credit created by this section is worth 10 percent of the depreciable basis of eligible property placed in service as part of a qualified broadband project. To be eligible for the credit, broadband providers must acquire and then construct, reconstruct, or erect the property placed in service. Certain progress expenditures are also eligible for the credit. In determining the basis of eligible property for which broadband providers may receive the 10 percent investment tax credit, basis must be reduced by the full amount of any federal, state, or local grant or subsidy provided to finance the project for which the property will be placed in service.