

116TH CONGRESS
2D SESSION

S. 4587

To amend the Communications Act of 1934 to establish a program to expand access to broadband in unserved and underserved areas, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 16, 2020

Mr. GRAHAM (for himself and Mr. SCOTT of South Carolina) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend the Communications Act of 1934 to establish a program to expand access to broadband in unserved and underserved areas, 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 “State Funding for
5 Internet Expansion Act of 2020” or the “State Fix Act
6 of 2020”.

1 **SEC. 2. EXPANSION OF BROADBAND ACCESS.**

2 Title I of the Communications Act of 1934 (47
3 U.S.C. 151 et seq.) is amended by adding at the end the
4 following:

5 **“SEC. 14. EXPANSION OF BROADBAND ACCESS.**

6 “(a) DEFINITIONS.—In this section:

7 “(1) ANCHOR INSTITUTION.—The term ‘anchor
8 institution’ means—

9 “(A) a public or private elementary school
10 or secondary school, as those terms are defined
11 in section 8101 of the Elementary and Sec-
12 ondary Education Act of 1965 (20 U.S.C.
13 7801);

14 “(B) a library;

15 “(C) a medical or healthcare provider;

16 “(D) a museum;

17 “(E) a public safety entity;

18 “(F) public housing;

19 “(G) an institution of higher education, as
20 that term is defined in section 101 of the High-
21 er Education Act of 1965 (20 U.S.C. 1001), in-
22 cluding a community college; or

23 “(H) any other community support organi-
24 zation or agency.

25 “(2) AREA.—The term ‘area’ means the geo-
26 graphic unit of measurement with the greatest level

1 of granularity that is reasonably feasible for the
2 Commission to use in making eligibility determina-
3 tions under this section and in meeting the require-
4 ments and deadlines under this section.

5 “(3) ASSISTANT SECRETARY.—The term ‘As-
6 sistant Secretary’ means the Assistant Secretary of
7 Commerce for Communications and Information.

8 “(4) BROADBAND.—The term ‘broadband’—

9 “(A) has the meaning given the term
10 ‘broadband internet access service’ in section
11 8.1(b) of title 47, Code of Federal Regulations,
12 or any successor regulation;

13 “(B) includes any service that is the func-
14 tional equivalent of the service described in sub-
15 paragraph (A); and

16 “(C) does not include dial-up internet ac-
17 cess service.

18 “(5) COVERED ENTITY.—The term ‘covered en-
19 tity’—

20 “(A) means an entity that—

21 “(i) is owned by, controlled by, affili-
22 ated with, or acting at the direction of an
23 entity that is organized under the laws of,
24 or otherwise subject to the jurisdiction of,
25 a country, the government of which is on

1 the priority watch list established by the
2 United States Trade Representative pursu-
3 ant to section 182(a) of the Trade Act of
4 1974 (19 U.S.C. 2242(a)); and

5 “(ii) has engaged in an action that is
6 prohibited under—

7 “(I) section 1(a) of Executive
8 Order 13873 (84 Fed. Reg. 22689;
9 relating to securing the information
10 and communications technology and
11 services supply chain); or

12 “(II) any regulations issued in
13 response to the Executive Order de-
14 scribed in subclause (I); and

15 “(B) includes any subsidiary, affiliate, em-
16 ployee, or representative of, and any related
17 party with respect to, an entity described in
18 subparagraph (A), without regard to the loca-
19 tion or jurisdiction of incorporation of that sub-
20 sidiary, affiliate, employee, representative, or
21 party, as applicable.

22 “(6) FUNDING RECIPIENT.—The term ‘funding
23 recipient’ means an entity that receives funding for
24 a project under this section.

1 “(7) PROGRAM.—Unless otherwise expressly in-
2 dicated, the term ‘program’ means the program es-
3 tablished under subsection (b).

4 “(8) PROJECT.—The term ‘project’ means a
5 project that uses funding made available under this
6 section to construct and deploy infrastructure for
7 the provision of broadband.

8 “(9) PUBLIC HOUSING.—The term ‘public hous-
9 ing’—

10 “(A) has the meaning given the term in
11 section 3(b) of the United States Housing Act
12 of 1937 (42 U.S.C. 1437a(b)); and

13 “(B) includes housing receiving tenant-
14 based rental assistance provided under section
15 8(o) of the United States Housing Act of 1937
16 (42 U.S.C. 1437f(o)).

17 “(10) REVERSE AUCTION.—The term ‘reverse
18 auction’ means an auction in which—

19 “(A) bids are submitted for a project by
20 the entities that would construct or deploy in-
21 frastructure for the provision of broadband
22 under the project; and

23 “(B) the winning bid is the bid that pro-
24 poses serving an area for the lowest cost, taking

1 into consideration the preferences under sub-
2 section (d)(2).

3 “(11) UNDERSERVED AREA.—The term ‘under-
4 served area’ means an area in which more than 10
5 percent, but not more than 50 percent, of the popu-
6 lation of the area has access to broadband—

7 “(A) with a download speed of at least 25
8 megabits per second and not more than 50
9 megabits per second; and

10 “(B) with an upload speed of at least 3
11 megabits per second.

12 “(12) UNSERVED ANCHOR INSTITUTION.—The
13 term ‘unserved anchor institution’ means an anchor
14 institution that does not have access to broadband
15 offered—

16 “(A) with a download speed of at least 100
17 megabits per second; and

18 “(B) with an upload speed of at least 10
19 megabits per second.

20 “(13) UNSERVED AREA.—The term ‘unserved
21 area’ means an area in which not more than 10 per-
22 cent of the population of the area has access to
23 broadband—

24 “(A) with a download speed of at least 25
25 megabits per second; and

1 “(B) with an upload speed of at least 3
2 megabits per second.

3 “(b) PROGRAM ESTABLISHED.—Not later than 270
4 days after the date of enactment of this section, the Com-
5 mission, in consultation with the Assistant Secretary, shall
6 establish a program—

7 “(1) to expand access to broadband in unserved
8 areas and underserved areas, and for unserved an-
9 chor institutions, in accordance with the require-
10 ments of this section; and

11 “(2) that—

12 “(A) is separate from any universal service
13 program established under section 254; and

14 “(B) does not require a funding recipient
15 to be designated as an eligible telecommuni-
16 cations carrier under section 214(e).

17 “(c) USE OF PROGRAM FUNDS.—

18 “(1) PUBLIC NOTICE.—

19 “(A) IN GENERAL.—Not later than 270
20 days after the date of enactment of this section,
21 the Commission shall publish in the Federal
22 Register a notice informing each State and the
23 public that amounts made available to carry out
24 this section shall be distributed under this sub-
25 section.

1 “(B) CONTENTS.—The notice published
2 under subparagraph (A) shall include—

3 “(i) the manner in which a State shall
4 inform the Commission of the acceptance
5 by that State, in whole or in part, of the
6 amounts to be distributed to the State
7 under this subsection;

8 “(ii) a notification that the acceptance
9 described in clause (i) shall be due on the
10 date that is 45 days after the date on
11 which the Commission issues the public no-
12 tice; and

13 “(iii) the requirements with respect to
14 the use of the distributed amounts under
15 this section and under any further require-
16 ments that the Commission may prescribe.

17 “(2) ACCEPTANCE BY STATES.—Not later than
18 45 days after the date on which the Commission
19 publishes the notice required under paragraph (1),
20 each State accepting amounts to be distributed
21 under this subsection shall inform the Commission
22 of the acceptance, in whole or in part, by the State
23 of those amounts in the manner described by the
24 Commission in the notice.

1 “(3) EXPANDING ACCESS TO BROADBAND
2 THROUGH STATES.—

3 “(A) IN GENERAL.—Not later than 1 year
4 after the date of enactment of this section, the
5 Commission shall distribute amounts made
6 available to carry out this section among the
7 States that have agreed to accept the funds.

8 “(B) FORMULAS.—The amount that a
9 State receives under subparagraph (A) shall be
10 the sum of—

11 “(i) the amount obtained by—

12 “(I) dividing the number of indi-
13 viduals living in unserved areas in the
14 State by the total number of individ-
15 uals living in unserved areas in the
16 United States; and

17 “(II) multiplying 80 percent of
18 the amount made available to carry
19 out this section by the quotient ob-
20 tained under subclause (I); and

21 “(ii) the amount obtained by—

22 “(I) dividing the number of indi-
23 viduals living in underserved areas in
24 the State by the total number of indi-

1 viduals living in underserved areas in
2 the United States; and

3 “(II) multiplying 20 percent of
4 the amount made available to carry
5 out this section by the quotient ob-
6 tained under subclause (I).

7 “(4) REQUIREMENTS FOR STATE RECEIPT OF
8 AMOUNTS DISTRIBUTED.—Each State accepting
9 amounts distributed under this subsection—

10 “(A) may allocate those amounts only
11 through a statewide reverse auction or auctions,
12 in the manner prescribed by the State, subject
13 to the requirements of this section (including
14 the rules promulgated under subsection (g))
15 and any further requirements that the Commis-
16 sion may prescribe;

17 “(B) may make an allocation under sub-
18 paragraph (A) only—

19 “(i) to a funding recipient to expand
20 access to broadband in unserved areas
21 within the State;

22 “(ii) to a funding recipient to expand
23 access to broadband for unserved anchor
24 institutions located in the State; or

1 “(iii) if a State does not have, or no
2 longer has, an unserved area within the
3 State, to a funding recipient to expand ac-
4 cess to broadband in underserved areas in
5 the State;

6 “(C) shall—

7 “(i) not later than 10 years after the
8 date of enactment of this section, return to
9 the Commission any unused portion of
10 those amounts; and

11 “(ii) before accepting those amounts,
12 submit to the Commission a certification
13 that the State will comply with clause (i);
14 and

15 “(D) may not use more than 5 percent of
16 those amounts to administer a reverse auction
17 that complies with the requirements of this sec-
18 tion.

19 “(5) DISTRIBUTION OF REMAINING FUNDS.—In
20 the case of any amounts remaining after the
21 amounts made available to carry out this section are
22 distributed under this subsection, the Commission
23 shall transfer those amounts to the general fund of
24 the Treasury, where those transferred amounts shall
25 be dedicated for the sole purpose of deficit reduction.

1 “(d) PROGRAM REQUIREMENTS.—

2 “(1) TECHNOLOGY NEUTRALITY REQUIRED.—A
3 State administering a reverse auction to make
4 awards under subsection (c) may not favor a project
5 using any particular technology.

6 “(2) BIDDING PREFERENCE.—Consistent with
7 the program, there shall be a preference, as deter-
8 mined by the entity administering a reverse auction,
9 for a bidder in the reverse auction that proposes a
10 project that is described by any of the following:

11 “(A) Not less than 20 percent of the funds
12 provided by the bidder with respect to the
13 project are matched from private sources.

14 “(B) The project would expand access to
15 broadband on tribal lands, as that term is de-
16 fined by the Commission.

17 “(C) The project would provide broadband
18 that has—

19 “(i) latency of not more than 50 milli-
20 seconds; and

21 “(ii)(I) a download speed that is
22 greater than 100 megabits per second or
23 an upload speed of at least 20 megabits
24 per second; or

1 “(II) a download speed of at least 1
2 gigabit per second or an upload speed of at
3 least 100 megabits per second.

4 “(D) The project would expand access to
5 broadband in advance of the time specified in
6 subsection (g)(1)(D).

7 “(E) The project would expand access to
8 broadband to areas in which the median house-
9 hold income is below 150 percent of the poverty
10 threshold, as defined by the Bureau of the Cen-
11 sus.

12 “(F) The project would provide affordable
13 payment options to subscribers in locations
14 served.

15 “(3) NOTICE, TRANSPARENCY, ACCOUNT-
16 ABILITY, AND OVERSIGHT REQUIRED.—The program
17 shall contain sufficient notice, transparency, ac-
18 countability, and oversight measures to—

19 “(A) provide the public with notice regard-
20 ing the assistance provided under this section;
21 and

22 “(B) deter waste, fraud, and abuse with
23 respect to program funds.

24 “(4) COMPETENCE.—The program shall contain
25 sufficient processes and requirements, as established

1 by each State participating in the program, to en-
2 sure that each entity participating in a reverse auc-
3 tion conducted by the State—

4 “(A) is capable of carrying out the applica-
5 ble project in a manner that is competent and
6 that complies with all applicable Federal, State,
7 and local laws;

8 “(B) has the financial capacity to—

9 “(i) meet the buildout obligations of
10 the applicable project; and

11 “(ii) satisfy the requirements of this
12 section and any other further requirements
13 that the Commission may prescribe in car-
14 rying out this section; and

15 “(C) has the technical and operational ca-
16 pacity to provide broadband in the manner con-
17 templated by any bid placed by the entity dur-
18 ing the reverse auction, which shall include a
19 detailed consideration of—

20 “(i) the prior performance of the enti-
21 ty in constructing broadband infrastruc-
22 ture in rural areas; and

23 “(ii) the capability of the proposed in-
24 frastructure to be constructed and de-
25 ployed by the entity to provide the pro-

1 posed broadband services in the area that
2 the infrastructure would serve.

3 “(e) PROJECT REQUIREMENTS.—Any project funded
4 through the program shall satisfy the following require-
5 ments:

6 “(1) The project shall adhere to quality-of-serv-
7 ice standards established by the Commission.

8 “(2) The project—

9 “(A) shall offer broadband that, at a min-
10 imum, provides—

11 “(i) a download speed of at least the
12 greater of—

13 “(I) 50 megabits per second; or

14 “(II) the download speed re-
15 quired for an internet service to qual-
16 ify as an advanced telecommuni-
17 cations capability, as defined in sec-
18 tion 706(d) of the Telecommuni-
19 cations Act of 1996 (47 U.S.C.
20 1302(d));

21 “(ii) an upload speed of at least the
22 greater of—

23 “(I) 10 megabits per second; or

24 “(II) the upload speed required
25 for an internet service to qualify as an

1 advanced telecommunications capa-
2 bility, as defined in section 706(d) of
3 the Telecommunications Act of 1996
4 (47 U.S.C. 1302(d)); and

5 “(iii) a latency of not more than 100
6 milliseconds; and

7 “(B) may offer broadband that, at a min-
8 imum, provides a download speed of at least 25
9 megabits per second, an upload speed of at
10 least 3 megabits per second, and latency of not
11 more than 100 milliseconds, if the project is
12 also in compliance with subparagraph (A).

13 “(3) The project shall incorporate prudent cy-
14 bersecurity and supply chain risk management prac-
15 tices, as specified by the Commission in the rules
16 promulgated under subsection (g), after consultation
17 with the Director of the National Institute of Stand-
18 ards and Technology and the Assistant Secretary.

19 “(4)(A) Any laborer or mechanic employed by
20 any contractor or subcontractor in the performance
21 of work on the project shall be paid wages at rates
22 not less than those prevailing on similar construction
23 in the locality, as determined by the Secretary of
24 Labor under subchapter IV of chapter 31 of title 40,

1 United States Code (commonly referred to as the
2 ‘Davis-Bacon Act’).

3 “(B) With respect to the labor standards speci-
4 fied in subparagraph (A), the Secretary of Labor
5 shall have the authority and functions set forth in
6 Reorganization Plan Numbered 14 of 1950 (64 Stat.
7 1267; 5 U.S.C. App.) and section 3145 of title 40,
8 United States Code.

9 “(5) The funding recipient may not purchase
10 any materials, products, or services from a covered
11 entity.

12 “(f) DETERMINATIONS REGARDING UNSERVED AND
13 UNDERSERVED AREAS.—

14 “(1) INITIAL DETERMINATION.—

15 “(A) IN GENERAL.—Not later than 120
16 days after the date of enactment of this section,
17 the Commission shall, for the purposes of any
18 reverse auction conducted under this section,
19 make an initial determination as to whether an
20 area is an unserved area or an underserved
21 area and whether an anchor institution is an
22 unserved anchor institution.

23 “(B) RESOURCES.—In making a deter-
24 mination under subparagraph (A), the Commis-
25 sion shall—

1 “(i) to the extent practicable, use the
2 National Broadband Availability Map;

3 “(ii) to the extent practicable, use
4 data from the Broadband Serviceable Lo-
5 cation Fabric established under section
6 802(b)(1)(B);

7 “(iii) consider other data obtained or
8 purchased by the Commission that relates
9 to access to broadband;

10 “(iv) consider other publicly available
11 data or information regarding access to
12 broadband; and

13 “(v) consider other publicly available
14 data or information on State broadband
15 deployment programs and any additional
16 information States have on their constitu-
17 ents’ broadband access.

18 “(2) CHALLENGE PROCESS.—The Commission
19 shall provide for a process—

20 “(A) for challenging any initial determina-
21 tion under paragraph (1);

22 “(B) that, at a minimum, provides not less
23 than 45 days for a person to voluntarily submit
24 information concerning—

1 “(i) the broadband offered in the ap-
2 plicable area; or

3 “(ii) the broadband offered to an an-
4 chor institution, if applicable; and

5 “(C) that is sufficiently streamlined such
6 that a reasonably prudent person that submits
7 verified data, or meets other requirements im-
8 posed by the Commission, may easily challenge
9 an initial determination made under paragraph
10 (1) with little burden on that person.

11 “(3) FINAL DETERMINATIONS.—Not later than
12 225 days after the date of enactment of this section,
13 and after taking into consideration the challenges
14 brought under paragraph (2), the Commission shall
15 make a final determination of the areas that are
16 unserved areas or underserved areas and which an-
17 chor institutions are unserved anchor institutions.

18 “(g) RULEMAKING, DISTRIBUTION, AND AWARD OF
19 FUNDS.—

20 “(1) IN GENERAL.—Not later than 225 days
21 after the date of enactment of this section, the Com-
22 mission, in consultation with the Assistant Sec-
23 retary, shall promulgate rules that accomplish the
24 following:

1 “(A) Implement the requirements of this
2 section.

3 “(B) Establish the design of, and require-
4 ments for, a reverse auction conducted by a
5 State under this section.

6 “(C) Establish notice requirements for all
7 reverse auctions conducted under this section
8 that, at a minimum, and in accordance with the
9 determinations made under subsection (f), pro-
10 vide the public with notice of—

11 “(i) the initial determination of which
12 areas are unserved areas or underserved
13 areas under paragraph (1) of that sub-
14 section;

15 “(ii) the final determination of which
16 areas are unserved areas or underserved
17 areas under paragraph (3) of that sub-
18 section, after the process for challenging
19 the initial determination has concluded;
20 and

21 “(iii) with respect to a particular re-
22 verse auction, which entities have applied
23 to bid for funding.

24 “(D) With respect to a funding recipient
25 that receives funding under this section for a

1 project, provide that, not later than 6 years
2 after the date on which the funding recipient
3 receives the funding, the funding recipient shall
4 provide service to not less than 80 percent of
5 the areas proposed to be served by the project.

6 “(E) Establish broadband buildout mile-
7 stones and periodic certification by funding re-
8 cipients to ensure compliance with the
9 broadband buildout milestones.

10 “(F) Establish periodic reporting require-
11 ments for funding recipients that require those
12 funding recipients to identify, at a minimum,
13 with respect to the project to which the funding
14 relates, the technology used, the level of service
15 offered, and the percentage of the applicable
16 area served.

17 “(G) Establish mechanisms to reduce
18 waste, fraud, and abuse within the program
19 with respect to any reverse auction conducted
20 under this section.

21 “(H) Establish processes to—

22 “(i) assist States in conducting state-
23 wide reverse auctions;

24 “(ii) coordinate with States to ensure
25 that funds disbursed by the Commission

1 and program funds awarded by the States
2 are not used to expand access to
3 broadband in the same unserved areas;

4 “(iii) coordinate with other Federal
5 programs that expand access to
6 broadband, such as the program set forth
7 under subpart D of part 54 of title 47,
8 Code of Federal Regulations (or any suc-
9 cessor regulations), the program set forth
10 under subpart J of part 54 of title 47,
11 Code of Federal Regulations (or any suc-
12 cessor regulations), and the broadband
13 loan and grant pilot program authorized
14 under section 779 of division A of the Con-
15 solidated Appropriations Act, 2018 (Public
16 Law 115–141; 132 Stat. 399), to ensure
17 the efficient use of program funds; and

18 “(iv) ensure that each participating
19 State conducts a reverse auction in a man-
20 ner that—

21 “(I) achieves the goals of this
22 section; and

23 “(II) does not conflict with the
24 rules of, or reverse auctions conducted
25 by, the Commission.

1 “(2) SENSE OF CONGRESS.—It is the sense of
2 Congress that, in conducting the rulemaking under
3 paragraph (1), the Commission should consider
4 using milestones for completion under the program
5 that are similar to those with respect to the program
6 set forth under subpart J of part 54 of title 47,
7 Code of Federal Regulations (or any successor regu-
8 lations).

9 “(3) STATE RULEMAKING REQUIREMENTS.—A
10 State that accepts funding under the program shall
11 promulgate rules that establish—

12 “(A) standard penalties for any funding
13 recipient or project that does not comply with
14 this section or with any additional requirements
15 imposed by the State with respect to a reverse
16 auction conducted by the State; and

17 “(B) procedures for the recovery of funds,
18 in whole or in part, from a funding recipient if
19 the funding recipient, or the project carried out
20 by the funding recipient, fails to comply with
21 the requirements of this section or with any ad-
22 ditional requirements imposed by the State with
23 respect to a reverse auction conducted by the
24 State.

25 “(h) REPORTS REQUIRED.—

1 “(1) INSPECTOR GENERAL AND COMPTROLLER
2 GENERAL ANNUAL REPORTS.—Not later than 1 year
3 after the date on which funds are first awarded
4 under the program, and annually thereafter through
5 fiscal year 2029, the Inspector General of the Com-
6 mission and the Comptroller General of the United
7 States shall submit to the Committee on Commerce,
8 Science, and Transportation of the Senate and the
9 Committee on Energy and Commerce of the House
10 of Representatives a report that—

11 “(A) reviews the program for the year cov-
12 ered by the report; and

13 “(B) includes any recommendations to ad-
14 dress waste, fraud, and abuse with respect to
15 the program.

16 “(2) STATE REPORTS.—A State that, in a year,
17 receives funds under the program shall submit to the
18 Commission—

19 “(A) a report regarding how those funds
20 were spent during the applicable year; and

21 “(B) a certification that the State, for that
22 year, has complied with the requirements of this
23 section and with any further requirements pre-
24 scribed by the Commission in carrying out this
25 section, including a description of services pro-

1 vided with those funds and the number of loca-
2 tions to which broadband service was provided
3 with those funds.

4 “(i) AUTHORIZATION OF APPROPRIATIONS.—There is
5 authorized to be appropriated to the Commission
6 \$20,000,000,000 for fiscal year 2020 to carry out the pro-
7 gram, which shall remain available through fiscal year
8 2029.”.

○