

112TH CONGRESS
1ST SESSION

S. 942

To provide for improved investment in national transportation infrastructure.

IN THE SENATE OF THE UNITED STATES

MAY 10, 2011

Mrs. MURRAY (for herself, Ms. COLLINS, and Mr. DURBIN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To provide for improved investment in national
transportation infrastructure.

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 “Transportation Infra-
5 structure Grants and Economic Reinvestment Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) **ELIGIBLE ENTITY.**—The term “eligible enti-
9 ty” means—

10 (A) a State;

1 (B) a local government;

2 (C) a transit agency; and

3 (D) 2 or more of the entities described in
4 subparagraphs (A) through (C), working in col-
5 laboration.

6 (2) ELIGIBLE PROJECT.—

7 (A) IN GENERAL.—The term “eligible
8 project” means a transportation project that, as
9 determined by the Secretary, would have a sig-
10 nificant beneficial impact on a State, a metro-
11 politan area, a region, or the United States.

12 (B) INCLUSIONS.—The term “eligible
13 project” includes—

14 (i) a highway or bridge project eligible
15 for funding under chapter 1 of title 23,
16 United States Code;

17 (ii) a public transportation project eli-
18 gible for funding under chapter 53 of title
19 49, United States Code;

20 (iii) a passenger or freight rail trans-
21 portation project; and

22 (iv) a port infrastructure project.

23 (3) ELIGIBLE PROJECT COSTS.—

1 (A) IN GENERAL.—The term “eligible
2 project costs” means costs relating to an eligi-
3 ble project, such as the costs of—

4 (i) development phase activities, in-
5 cluding planning, feasibility analysis, rev-
6 enue forecasting, environmental review,
7 permitting, preliminary engineering and
8 design work, and other preconstruction ac-
9 tivities;

10 (ii) construction, reconstruction, reha-
11 bilitation, replacement, and acquisition of
12 real property (including land related to the
13 eligible project and improvements to land),
14 environmental mitigation, construction con-
15 tingencies, and acquisition of equipment;
16 and

17 (iii) capitalized interest necessary to
18 meet market requirements, reasonably re-
19 quired reserve funds, capital issuance ex-
20 penses, and other carrying costs during
21 construction.

22 (B) EXCLUSION.—The term “eligible
23 project costs” does not include the costs of
24 dredging activities.

1 (4) FEDERAL CREDIT INSTRUMENT.—The term
2 “Federal credit instrument” means a secured loan
3 or loan guarantee authorized to be made available
4 under this Act with respect to an eligible project.

5 (5) INVESTMENT-GRADE RATING.—The term
6 “investment-grade rating” means a rating of BBB
7 minus, Baa3, bbb minus, BBB (low), or higher as-
8 signed by a rating agency to project obligations.

9 (6) LENDER.—The term “lender” means any
10 non-Federal qualified institutional buyer (as defined
11 in section 230.144A(a) of title 17, Code of Federal
12 Regulations (or any successor regulation), known as
13 Rule 144A(a) of the Securities and Exchange Com-
14 mission and issued under the Securities Act of 1933
15 (15 U.S.C. 77a et seq.)), including—

16 (A) a qualified retirement plan (as defined
17 in section 4974(c) of the Internal Revenue Code
18 of 1986) that is a qualified institutional buyer;
19 and

20 (B) a governmental plan (as defined in
21 section 414(d) of the Internal Revenue Code of
22 1986) that is a qualified institutional buyer.

23 (7) LOAN GUARANTEE.—The term “loan guar-
24 antee” means any guarantee or other pledge by the
25 Secretary to pay all or part of the principal of and

1 interest on a loan or other debt obligation issued by
2 an obligor and funded by a lender.

3 (8) OBLIGOR.—The term “obligor” means a
4 party primarily liable for payment of the principal of
5 or interest on a Federal credit instrument, which
6 party may be a corporation, partnership, joint ven-
7 ture, trust, or governmental entity, agency, or in-
8 strumentality.

9 (9) PROJECT OBLIGATION.—The term “project
10 obligation” means any note, bond, debenture, or
11 other debt obligation issued by an obligor in connec-
12 tion with the financing of an eligible project, other
13 than a Federal credit instrument.

14 (10) RATING AGENCY.—The term “rating agen-
15 cy” means a credit rating agency registered with the
16 Securities and Exchange Commission as a nationally
17 recognized statistical rating organization (as defined
18 in section 3(a) of the Securities Exchange Act of
19 1934 (15 U.S.C. 78c(a))).

20 (11) RURAL AREA.—The term “rural area”
21 means any area not in an urbanized area (as that
22 term is defined by the Census Bureau).

23 (12) SECRETARY.—The term “Secretary”
24 means the Secretary of Transportation.

1 (13) SECURED LOAN.—The term “secured
2 loan” means a direct loan or other debt obligation
3 issued by an obligor and funded by the Secretary in
4 connection with the financing of an eligible project.

5 (14) STATE.—The term “State” means—

6 (A) any of the 50 States; or

7 (B) the District of Columbia.

8 (15) SUBSIDY AMOUNT.—The term “subsidy
9 amount” means the amount of budget authority suf-
10 ficient to cover the estimated long-term cost to the
11 Federal Government of a Federal credit instrument,
12 calculated on a net present value basis, excluding
13 administrative costs and any incidental effects on
14 governmental receipts or outlays in accordance with
15 the provisions of the Federal Credit Reform Act of
16 1990 (2 U.S.C. 661 et seq.).

17 (16) SUBSTANTIAL COMPLETION.—The term
18 “substantial completion” means the opening of an
19 eligible project to vehicular or passenger traffic.

20 **SEC. 3. NATIONAL INFRASTRUCTURE INVESTMENT PRO-**
21 **GRAM.**

22 (a) PROGRAM.—Not later than 1 year after the date
23 of enactment of this Act, the Secretary shall by regulation
24 establish a program under which the Secretary shall pro-
25 vide grants, secured loans, and loan guarantees on a com-

1 petitive basis, to eligible entities for use in carrying out
2 eligible projects.

3 (b) GRANT REQUIREMENTS.—

4 (1) AMOUNT.—Except as provided in paragraph
5 (5)(B)(i), a grant or secured loan provided under
6 this Act shall be in an amount that is not less than
7 \$10,000,000 and not greater than \$500,000,000.

8 (2) GEOGRAPHICAL DISTRIBUTION; BALANCE;
9 INVESTMENT.—In providing grants and Federal
10 credit instruments under this Act, the Secretary
11 shall take such measures as are necessary to ensure,
12 to the maximum extent practicable—

13 (A) an equitable geographical distribution
14 of funds;

15 (B) an appropriate balance in addressing
16 the needs of urban and rural areas; and

17 (C) investment in a variety of transpor-
18 tation modes.

19 (3) MAXIMUM PERCENTAGE PER STATE.—Not
20 more than 25 percent of the amounts made available
21 to provide grants and Federal credit instruments
22 under this Act for a fiscal year may be provided for
23 eligible projects in a State.

24 (4) FEDERAL SHARE.—

1 (A) IN GENERAL.—Except as provided in
2 paragraph (5)(B)(ii), the Federal share of the
3 cost of carrying out any eligible project funded
4 by a grant or secured loan under this Act shall
5 be, at the option of the eligible entity receiving
6 the grant, up to 80 percent.

7 (B) PRIORITY.—In providing grants and
8 secured loans under this Act, the Secretary
9 shall give priority to eligible projects that re-
10 quire a contribution of Federal funds in order
11 to complete an overall financing package for the
12 eligible projects.

13 (5) ELIGIBLE PROJECTS IN RURAL AREAS.—

14 (A) IN GENERAL.—Not less than 20 per-
15 cent of the amounts made available to provide
16 grants under this Act for a fiscal year shall be
17 provided for eligible projects located in rural
18 areas.

19 (B) MINIMUM GRANT AMOUNT; FEDERAL
20 SHARE.—With respect to an eligible project lo-
21 cated in a rural area—

22 (i) the minimum amount of a grant or
23 secured loan provided under this Act shall
24 be \$1,000,000; and

1 (ii) the Secretary may increase the
2 Federal share of the cost of carrying out
3 the eligible project up to 100 percent.

4 (6) SET-ASIDES FOR CERTAIN COSTS,
5 PROJECTS, AND TRANSFERS.—Of the amounts made
6 available under this Act for a fiscal year, the Sec-
7 retary may—

8 (A) use not more than 25 percent to pay
9 the subsidy and administrative costs of secured
10 loans and loan guarantees for eligible projects;

11 (B) use an amount not to exceed
12 \$20,000,000 for grants that pay for the plan-
13 ning, preparation, or design of eligible projects;
14 and

15 (C) use an amount not to exceed
16 \$35,000,000 to fund the provision and over-
17 sight of grants under this Act, including trans-
18 fers of funds from that amount to the Adminis-
19 trators of the Federal Highway Administration,
20 the Federal Transit Administration, the Fed-
21 eral Railroad Administration, and the Federal
22 Maritime Administration to fund the provision
23 and oversight of grants under this Act for eligi-
24 ble projects under the administrative jurisdic-
25 tion of those agencies.

1 (c) SELECTION AMONG ELIGIBLE PROJECTS.—

2 (1) ESTABLISHMENT.—The Secretary shall es-
3 tablish criteria for use in selecting among eligible
4 projects to receive funding under this Act.

5 (2) SELECTION CRITERIA.—

6 (A) PRIMARY SELECTION CRITERIA.—The
7 Secretary shall select among eligible projects by
8 evaluating the extent to which an eligible
9 project provides significant benefits to a State,
10 a metropolitan area, a region, or the United
11 States, including the extent to which an eligible
12 project—

13 (i) improves the safety of transpor-
14 tation facilities and systems;

15 (ii) improves the condition of existing
16 transportation facilities and systems;

17 (iii) contributes to economic competi-
18 tiveness over the medium- to long-term;

19 (iv) improves the environment, im-
20 proves energy efficiency, reduces depend-
21 ence on oil, or reduces greenhouse gas
22 emissions; and

23 (v) improves access to transportation
24 facilities and systems.

1 (B) SECONDARY SELECTION CRITERIA.—

2 In addition to considering the primary selection
3 criteria described in subparagraph (A), the Sec-
4 retary shall consider the extent to which a
5 project—

6 (i) uses innovative strategies or tech-
7 nologies to pursue any of those primary se-
8 lection criteria; and

9 (ii) demonstrates strong collaboration
10 among a broad range of participants, or
11 the integration of transportation with
12 other public service efforts.

13 (C) FEDERAL CREDIT INSTRUMENTS.—In
14 selecting among eligible projects to receive Fed-
15 eral credit instruments, the Secretary shall con-
16 sider the creditworthiness of each eligible
17 project, including a determination by the Sec-
18 retary that any financing for the eligible project
19 has appropriate security features, such as a
20 rate covenant, to ensure repayment.

21 (d) APPLICATION REQUIREMENT.—

22 (1) IN GENERAL.—The Secretary shall require
23 that each application for a grant or Federal credit
24 instrument under this Act include an analysis of
25 project benefits and costs.

1 (2) FEDERAL CREDIT INSTRUMENTS.—For pur-
2 poses of subsection (c)(2)(C), the Secretary shall re-
3 quire each eligible project applicant to provide a pre-
4 liminary rating opinion letter from at least 1 rating
5 agency indicating that the senior project obligations,
6 which may be the Federal credit instrument, have
7 the potential to achieve an investment-grade rating.

8 (e) FEDERAL REQUIREMENTS.—The following provi-
9 sions of law shall apply to funds made available under this
10 Act and eligible projects carried out using those funds:

11 (1) Subchapter IV of chapter 31 of title 40,
12 United States Code.

13 (2) Title VI of the Civil Rights Act of 1964 (42
14 U.S.C. 2000d et seq.).

15 (3) The National Environmental Policy Act of
16 1969 (42 U.S.C. 4321 et seq.).

17 (4) The Uniform Relocation Assistance and
18 Real Property Acquisition Policies Act of 1970 (42
19 U.S.C. 4601 et seq.).

20 (f) TRANSPARENCY.—

21 (1) IN GENERAL.—The Secretary shall include
22 in any notice of funding availability a full descrip-
23 tion of how applications will be evaluated against all
24 selection criteria.

1 (2) CONSULTATIONS ON DECISIONS.—After
2 provision of grants and credit assistance under this
3 Act for a fiscal year, the Secretary (or a designee)
4 shall be available to meet with any applicant, at a
5 time and place that is mutually acceptable to the
6 Secretary and the applicant, to review the applica-
7 tion of the applicant.

8 **SEC. 4. SECURED LOANS AND LOAN GUARANTEES.**

9 (a) IN GENERAL.—

10 (1) AGREEMENTS.—Subject to paragraphs (2)
11 and (3), the Secretary may enter into arrangements
12 with 1 or more obligors to make secured loans, the
13 proceeds of which shall be used to finance eligible
14 project costs of any eligible project selected to re-
15 ceive funding under this Act.

16 (2) RISK ASSESSMENT.—Before entering into
17 an agreement under this subsection, the Secretary,
18 in consultation with the Director of the Office of
19 Management and Budget and each rating agency
20 providing a preliminary rating opinion letter under
21 section 3(d)(2), shall determine an appropriate cap-
22 ital reserve subsidy amount for each secured loan,
23 taking into account the letter.

24 (3) INVESTMENT-GRADE RATING REQUIRE-
25 MENT.—The execution of a secured loan under this

1 Act shall be contingent on the senior project obliga-
2 tions receiving an investment-grade rating.

3 (b) TERMS AND LIMITATIONS.—

4 (1) IN GENERAL.—A secured loan under this
5 Act with respect to an eligible project shall be on
6 such terms and conditions and contain such cov-
7 enants, representations, warranties, and require-
8 ments (including requirements for audits) as the
9 Secretary determines appropriate.

10 (2) MAXIMUM AMOUNT.—If a secured loan
11 under this Act does not receive an investment grade
12 rating, the amount of the secured loan shall not ex-
13 ceed the lesser of—

14 (A) 80 percent of the reasonably antici-
15 pated eligible project costs; and

16 (B) the amount of the senior project obli-
17 gations.

18 (3) PAYMENT.—The secured loan—

19 (A) shall—

20 (i) be payable, in whole or in part,
21 from tolls, user fees, or other dedicated
22 revenue sources that also secure the senior
23 project obligations; and

1 (ii) include a rate covenant, coverage
2 requirement, or similar security feature
3 supporting the project obligations; and

4 (B) may have a lien on revenues described
5 in subparagraph (A) subject to any lien secur-
6 ing project obligations.

7 (4) INTEREST RATE.—The interest rate on the
8 secured loan shall be not less than the yield on
9 United States Treasury securities of a similar matu-
10 rity to the maturity of the secured loan on the date
11 of execution of the loan agreement.

12 (5) MATURITY DATE.—The final maturity date
13 of the secured loan shall be not later than 35 years
14 after the date of substantial completion of the eligi-
15 ble project.

16 (6) NONSUBORDINATION.—The secured loan
17 shall not be subordinated to the claims of any holder
18 of project obligations in the event of bankruptcy, in-
19 solvency, or liquidation of the obligor.

20 (7) FEES.—The Secretary may establish fees at
21 a level sufficient to cover all or a portion of the costs
22 to the Federal Government of making a secured loan
23 under this Act.

24 (8) NON-FEDERAL SHARE.—The proceeds of a
25 secured loan under this Act may be used to provide

1 any non-Federal share of eligible project costs re-
2 quired under chapter 1 of title 23, or chapter 53 of
3 title 49, United States Code, if the loan is repayable
4 using non-Federal funds.

5 (c) REPAYMENT.—

6 (1) SCHEDULE.—The Secretary shall establish
7 a repayment schedule for each secured loan under
8 this Act based on the projected cash flow from eligi-
9 ble project revenues and other repayment sources.

10 (2) COMMENCEMENT.—Scheduled loan repay-
11 ments of principal or interest on a secured loan
12 under this Act shall commence not later than 5
13 years after the date of substantial completion of the
14 eligible project.

15 (3) DEFERRED PAYMENTS.—

16 (A) AUTHORIZATION.—If, at any time
17 after the date of substantial completion of the
18 eligible project, the eligible project is unable to
19 generate sufficient revenues to pay the sched-
20 uled loan repayments of principal and interest
21 on the secured loan, the Secretary may, subject
22 to subparagraph (C), allow the obligor to add
23 unpaid principal and interest to the outstanding
24 balance of the secured loan.

1 (B) INTEREST.—Any payment deferred
2 under subparagraph (A) shall—

3 (i) continue to accrue interest in ac-
4 cordance with subsection (b)(4) until fully
5 repaid; and

6 (ii) be scheduled to be amortized over
7 the remaining term of the loan.

8 (C) CRITERIA.—

9 (i) IN GENERAL.—Any payment defer-
10 ral under subparagraph (A) shall be con-
11 tingent on the eligible project meeting cri-
12 teria established by the Secretary.

13 (ii) REPAYMENT STANDARDS.—The
14 criteria established under clause (i) shall
15 include standards for reasonable assurance
16 of repayment.

17 (4) PREPAYMENT.—

18 (A) USE OF EXCESS REVENUES.—Any ex-
19 cess revenues that remain after satisfying
20 scheduled debt service requirements on the
21 project obligations and secured loan and all de-
22 posit requirements under the terms of any trust
23 agreement, bond resolution, or similar agree-
24 ment securing project obligations may be ap-

1 plied annually to prepay the secured loan with-
2 out penalty.

3 (B) USE OF PROCEEDS OF REFI-
4 NANCING.—The secured loan may be prepaid at
5 any time without penalty from the proceeds of
6 refinancing from non-Federal funding sources.

7 (d) SALE OF SECURED LOANS.—

8 (1) IN GENERAL.—Subject to paragraph (2), as
9 soon as practicable after substantial completion of
10 an eligible project and after notifying the obligor,
11 the Secretary may sell to another entity or reoffer
12 into the capital markets a secured loan for the eligi-
13 ble project if the Secretary determines that the sale
14 or reoffering can be made on favorable terms.

15 (2) CONSENT OF OBLIGOR.—In making a sale
16 or reoffering a secured loan under paragraph (1),
17 the Secretary may not change the original terms and
18 conditions of the secured loan without the written
19 consent of the obligor.

20 (e) LOAN GUARANTEES.—

21 (1) IN GENERAL.—The Secretary may provide a
22 loan guarantee to a lender in lieu of making a se-
23 cured loan if the Secretary determines that the
24 budgetary cost of the loan guarantee is substantially
25 the same as that of a secured loan.

1 (2) TERMS.—The terms of a guaranteed loan
2 shall be consistent with the terms that apply to a se-
3 cured loan under this Act, except that the rate on
4 the guaranteed loan and any prepayment features
5 shall be negotiated between the obligor and the lend-
6 er, with the consent of the Secretary.

7 (f) ADMINISTRATION OF FEDERAL CREDIT INSTRU-
8 MENTS.—

9 (1) IN GENERAL.—The Secretary shall establish
10 a uniform system to service the Federal credit in-
11 struments made available under this Act.

12 (2) FEES.—The Secretary may collect and
13 spend fees, contingent upon authority being provided
14 in appropriations Acts, at a level that is sufficient to
15 cover—

16 (A) the costs of services of expert firms re-
17 tained pursuant to paragraph (4); and

18 (B) all or a portion of the costs to the
19 Federal Government of servicing the Federal
20 credit instruments under this Act.

21 (3) SERVICER.—

22 (A) IN GENERAL.—The Secretary may ap-
23 point a financial entity to assist the Secretary
24 in servicing Federal credit instruments under
25 this Act.

1 (B) DUTIES.—The servicer shall act as the
2 agent for the Secretary.

3 (C) FEE.—The servicer shall receive a
4 servicing fee, subject to approval by the Sec-
5 retary.

6 (4) ASSISTANCE FROM EXPERT FIRMS.—The
7 Secretary may retain the services of expert firms, in-
8 cluding counsel, in the field of municipal and project
9 finance, to assist in the underwriting and servicing
10 of Federal credit instruments.

11 **SEC. 5. STATE AND LOCAL PERMITS.**

12 Financial assistance under this Act with respect to
13 an eligible project shall not—

14 (1) relieve any recipient of the assistance of any
15 obligation to obtain any required State or local per-
16 mit or approval with respect to the eligible project;

17 (2) limit the right of any unit of State or local
18 government to approve or regulate any rate of re-
19 turn on private equity invested in the eligible
20 project; or

21 (3) otherwise supersede any State or local law
22 (including any regulation) applicable to the construc-
23 tion or operation of the eligible project.

1 **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated to carry out
3 this Act such sums as are necessary for each of fiscal
4 years 2012 through 2018.

○