

113TH CONGRESS  
1ST SESSION

# S. 387

To establish the American Infrastructure Investment Fund and other activities to facilitate investments in infrastructure projects that significantly enhance the economic competitiveness of the United States by improving economic output, productivity, or competitive commercial advantage, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 26, 2013

Mr. ROCKEFELLER (for himself and Mr. LAUTENBERG) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To establish the American Infrastructure Investment Fund and other activities to facilitate investments in infrastructure projects that significantly enhance the economic competitiveness of the United States by improving economic output, productivity, or competitive commercial advantage, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “American Infrastructure Investment Fund Act”.

1 (b) TABLE OF CONTENTS.—The table of contents of  
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.  
 Sec. 2. American infrastructure investment fund.  
 Sec. 3. National infrastructure investment grants.

3 **SEC. 2. AMERICAN INFRASTRUCTURE INVESTMENT FUND.**

4 (a) ESTABLISHMENT OF FUND.—Chapter 3 of title  
 5 49, United States Code, is amended—

6 (1) in the table of sections, by adding at the  
 7 end the following:

“SUBCHAPTER IV—AMERICAN INFRASTRUCTURE INVESTMENT FUND

- “361. Definitions.  
 “362. Establishment of Fund.  
 “363. Organizational structure and duties.  
 “364. Fund authorities and assistance.  
 “365. Studies and reports.”;

8 and

9 (2) by adding at the end the following:

10 “SUBCHAPTER IV—AMERICAN  
 11 INFRASTRUCTURE INVESTMENT FUND

12 **“§ 361. Definitions**

13 “In this subchapter:

14 “(1) BOARD.—The term ‘Board’ means the  
 15 Board of Directors of the Fund appointed pursuant  
 16 to section 363(b).

17 “(2) DIRECT LOAN.—The term ‘direct loan’ has  
 18 the meaning given the term under section 502(1) of  
 19 the Congressional Budget Act of 1974 (2 U.S.C.  
 20 661a(1)).

1           “(3) ECONOMIC COMPETITIVENESS.—The term  
2           ‘economic competitiveness’ means the ability of the  
3           economy to more efficiently produce goods and de-  
4           liver services, including—

5                   “(A) reductions in travel time of goods and  
6                   people, including reductions in average delay or  
7                   the uncertainty of travel time; and

8                   “(B) net benefits to society through eco-  
9                   nomic benefits attributable to improving the  
10                  spatial clustering of economic activity.

11           “(4) ELIGIBLE PROJECT.—The term ‘eligible  
12           project’ means a capital project that—

13                   “(A) advances the objectives of this sub-  
14                   chapter;

15                   “(B) is comprised of activities included in  
16                   a regional, State, or national plan, either at the  
17                   time of submission of the application or before  
18                   the obligation of funds from the Fund;

19                   “(C) has eligible project costs related to a  
20                   single project, or has aggregate eligible project  
21                   costs related to a program of projects that are  
22                   coordinated to achieve a unified improvement;  
23                   and

24                   “(D) is a transportation-related project.

1           “(5) ELIGIBLE FUNDING RECIPIENT.—The  
2 term ‘eligible funding recipient’—

3           “(A) means an entity that has received a  
4 financing award from the Fund;

5           “(B) shall be—

6           “(i) a non-Federal governmental enti-  
7 ty, agency, or instrumentality; or

8           “(ii) a nongovernmental entity, such  
9 as a corporation, partnership, joint ven-  
10 ture, or other instrumentality, that seeks  
11 funding for an eligible project; and

12           “(C) shall have a non-Federal govern-  
13 mental cosponsor of the project if it is a non-  
14 governmental entity.

15           “(6) ELIGIBLE PROJECT COST.—The term ‘eli-  
16 gible project cost’—

17           “(A) includes costs associated with devel-  
18 opment phase planning and design activities,  
19 construction, acquisition, rehabilitation, envi-  
20 ronmental remediation, interest expense during  
21 construction or reconstruction, and reasonable  
22 required reserves; and

23           “(B) excludes operating costs, research  
24 and development costs, and any other costs not

1 otherwise specifically provided for in subpara-  
2 graph (A).

3 “(7) EXECUTIVE DIRECTOR.—The term ‘Execu-  
4 tive Director’ means the Executive Director of the  
5 Fund appointed pursuant to section 363(a)(1).

6 “(8) FUND.—The term ‘Fund’ means the  
7 American Infrastructure Investment Fund of the  
8 Department of Transportation established under sec-  
9 tion 362.

10 “(9) INVESTMENT PLAN.—The term ‘invest-  
11 ment plan’ means a written mutual agreement be-  
12 tween the Fund and an applicant that outlines the  
13 prospective terms of financial assistance to be in-  
14 vested by the Fund.

15 “(10) LINE OF CREDIT.—The term ‘line of  
16 credit’ means an agreement entered into between the  
17 Fund and an eligible funding recipient to provide a  
18 direct loan at a future date upon the occurrence of  
19 certain events.

20 “(11) LOAN GUARANTEE.—The term ‘loan  
21 guarantee’ has the meaning given the term under  
22 section 502(3) of the Congressional Budget Act of  
23 1974 (2 U.S.C. 661a(3)).

24 “(12) OPERATING GUIDANCE.—The term ‘Op-  
25 erating Guidance’ means the detailed description of

1 the Fund’s operating policies and procedures that  
 2 has been published in accordance with this sub-  
 3 chapter.

4 “(13) QUALIFIED APPLICATION.—The term  
 5 ‘Qualified Application’ means an application that the  
 6 Executive Director has certified to have met eligi-  
 7 bility and qualification standards under this sub-  
 8 chapter.

9 “(14) RURAL.—The term ‘rural’ means all pop-  
 10 ulation and territory that are not within an Urban-  
 11 ized Area (as such term is defined in the most re-  
 12 cent decennial United States census).

13 “(15) SECRETARY.—Except as otherwise speci-  
 14 fied, the term ‘Secretary’ means the Secretary of  
 15 Transportation.

16 “(16) TRANSPORTATION-RELATED PROJECT.—  
 17 The term ‘transportation-related project’ means a  
 18 project that is part of, or related to, a transportation  
 19 improvement, including projects related to the con-  
 20 struction or improvement of—

21 “(A) a passenger or freight rail line;

22 “(B) a highway;

23 “(C) a bridge;

24 “(D) an airport;

25 “(E) an air traffic control system;

1 “(F) a port or marine facility;

2 “(G) an inland waterway;

3 “(H) a transmission or distribution pipe-  
4 line;

5 “(I) public transportation facilities or sys-  
6 tems;

7 “(J) intercity passenger bus or passenger  
8 rail facilities or equipment; or

9 “(K) freight rail facilities or equipment.

10 **“§ 362. Establishment of Fund**

11 “(a) ESTABLISHMENT.—There is established in the  
12 Department of Transportation an entity to be known as  
13 the ‘American Infrastructure Investment Fund’.

14 “(b) OBJECTIVES.—The primary objective of the  
15 Fund shall be—

16 “(1) to invest in infrastructure projects that  
17 provide measurable improvements to the economic  
18 competitiveness of all or part of the United States  
19 by increasing or otherwise improving economic out-  
20 put, productivity, or competitive commercial advan-  
21 tage;

22 “(2) to provide funding for projects that face  
23 significant funding barriers due to problems associ-  
24 ated with the need to combine resources across mul-  
25 tiple jurisdictions or modes of transportation;

1           “(3) to improve the efficiency or throughput of  
2 a national or regional transportation network by—

3           “(A) improving the integration between  
4 networks; or

5           “(B) improving the condition, performance,  
6 or long-term cost structure of existing infra-  
7 structure;

8           “(4) to improve the safety of transportation fa-  
9 cilities and systems, as measured by the reduction in  
10 risk of transportation-related crashes, injuries, or  
11 deaths; and

12           “(5) to improve the environmental sustain-  
13 ability of a national or regional transportation net-  
14 work, as measured by—

15           “(A) improvement in energy efficiency;

16           “(B) reduction in greenhouse gas and  
17 other harmful emissions;

18           “(C) conservation of natural resources;

19           “(D) improvement in water quality;

20           “(E) improvement in infrastructure resil-  
21 ience to environmental hazards and natural dis-  
22 asters; and

23           “(F) other beneficial environmental im-  
24 pacts.

25           “(c) STRATEGY.—



1           “(1) IN GENERAL.—The Fund shall advance  
2           the objectives set forth in subsection (b) by pro-  
3           viding financial assistance for individual projects or  
4           programs of related projects identified in State, re-  
5           gional, or national plans and designed to signifi-  
6           cantly improve national or regional economic com-  
7           petitiveness.

8           “(2) PROJECT PORTFOLIO.—The Fund shall—

9                   “(A) target projects or programs of related  
10                  projects with a demonstrated difficulty in ob-  
11                  taining complete financing through other avail-  
12                  able public or private sources of funds, for rea-  
13                  sons including project complexity, modes, or  
14                  other comparable transactional barriers;

15                  “(B) seek to identify appropriate Invest-  
16                  ment Plans for selected projects and programs  
17                  of projects; and

18                  “(C) use Fund resources to build a port-  
19                  folio of transformational investments that—

20                          “(i) promotes greater efficiency in the  
21                          movement of freight or the provision of  
22                          services;

23                          “(ii) promotes greater efficiency in the  
24                          movement of people;

1           “(iii) integrates multiple transpor-  
2           tation modes in the movement of pas-  
3           sengers or freight;

4           “(iv) promotes the use of innovation  
5           and best practices in the planning, design,  
6           development, and delivery of projects, in-  
7           cluding practices that promote perform-  
8           ance-based decision making to achieve na-  
9           tional, State, or regional objectives;

10          “(v) promotes cross-jurisdictional in-  
11          frastructure planning and coinvestment  
12          among a broad range of participants, in-  
13          cluding States, tribal governments, munici-  
14          palities, and public and private investors;  
15          and

16          “(vi) integrates transportation infra-  
17          structure investment planning, such as re-  
18          gional transportation plans, with land-use  
19          economic development and other infra-  
20          structure Investment Plans.

21          “(3) INVESTMENT PROSPECTUS.—

22                 “(A) PUBLICATION.—Not later than 1  
23                 year after the date of enactment of the Amer-  
24                 ican Infrastructure Investment Fund Act, the

1 Fund shall publish a detailed description of its  
2 strategy in an Investment Prospectus that—

3 “(i) specifies what will be considered  
4 significant to the economic competitiveness  
5 of all or part of the United States in a  
6 manner consistent with the primary objec-  
7 tive set forth in subsection (b)(1);

8 “(ii) specifies the priorities and stra-  
9 tegic focus of the Fund in—

10 “(I) reaching the objectives set  
11 forth in subsection (b); and

12 “(II) carrying out the Fund  
13 strategy described in this subsection;

14 “(iii) describes in detail—

15 “(I) the framework and method-  
16 ology for calculating the qualification  
17 score assigned under section  
18 364(f)(3);

19 “(II) the data to be requested  
20 from applicants; and

21 “(III) the formula to be applied  
22 to such data to calculate the qualifica-  
23 tion score;

24 “(iv) describes how selection criteria  
25 will be applied by the Fund to determine

1 the competitiveness of an application and  
2 its qualification score relative to other cur-  
3 rent applications and previously funded ap-  
4 plications; and

5 “(v) describes how the qualification  
6 score methodology and project selection  
7 framework are consistent with maximizing  
8 the Fund’s goals in urban and rural areas.

9 “(B) UPDATES.—Not later than 2 years  
10 after the original publication of the Investment  
11 Prospectus, and biennially thereafter, the Fund  
12 shall publish an updated Investment Pro-  
13 spectus.

14 “(C) APPROVAL.—The Fund may not pub-  
15 lish the Investment Prospectus or any subse-  
16 quent updates under subparagraph (B) until  
17 the Board has approved the Investment Pro-  
18 spectus by a majority vote.

19 “(4) OPERATING GUIDANCE.—

20 “(A) PUBLICATION.—Not later than 1  
21 year after the date of enactment of the Amer-  
22 ican Infrastructure Investment Fund Act, the  
23 Fund shall establish and publish its Operating  
24 Guidance for the management of the Fund,  
25 which shall—

1           “(i) establish general operating proce-  
2           dures to be followed by the Fund in car-  
3           rying out its authorities under this sub-  
4           chapter;

5           “(ii) establish criteria, requirements,  
6           and standards regarding the provisions of  
7           various forms of assistance authorized  
8           under this subchapter, including the var-  
9           ious forms and terms of credit assistance  
10          that are consistent with the requirements  
11          under this subchapter;

12          “(iii) establish an application and  
13          award process for Planning and Feasibility  
14          Loans in accordance with the provisions  
15          under this subchapter;

16          “(iv) establish disclosure and applica-  
17          tion procedures for nominating or other-  
18          wise proposing applications for project as-  
19          sistance, either solicited or unsolicited, that  
20          are consistent with the requirements under  
21          this subchapter;

22          “(v) describe in detail the form and  
23          timing of data and other information re-  
24          quired of applicants in conjunction with

1 consideration of an application for finan-  
2 cial assistance under this subchapter; and

3 “(vi) establish a schedule of regular  
4 time intervals for the submission for con-  
5 sideration of sets of 1 or more Investment  
6 Plans to the Board.

7 “(B) REVIEW AND UPDATE.—The Fund  
8 shall periodically review, and may update, the  
9 Operating Guidance published under subpara-  
10 graph (A).

11 “(5) RULEMAKING.—Paragraphs (3) and (4)  
12 shall be carried out in accordance with the rule-  
13 making procedures set forth in section 553 of title  
14 5, United States Code.

15 **“§ 363. Organizational structure and duties**

16 “(a) EXECUTIVE DIRECTOR.—

17 “(1) APPOINTMENT; AUTHORITY.—The Presi-  
18 dent shall appoint, by and with the advice and con-  
19 sent of the Senate, an Executive Director, who shall  
20 be the chief executive officer of the Fund, and shall  
21 have such executive functions, powers, and duties as  
22 set forth in this subchapter or prescribed by the  
23 Board.

24 “(2) SUPERVISION.—The Executive Director  
25 shall be subject to the supervision and direction of

1 the Secretary of Transportation, consistent with the  
2 Executive Director's duties under this subchapter  
3 and other requirements set forth in the Operating  
4 Guidance referred to in section 362(c)(4).

5 “(3) QUALIFICATIONS.—The Executive Director  
6 shall have demonstrated expertise in at least 2 of the  
7 following 3 areas:

8 “(A) Economic analysis.

9 “(B) Project, public, or corporate finance.

10 “(C) Organizational management.

11 “(4) TERM OF SERVICE; VACANCY.—The Exec-  
12 utive Director shall serve a 5-year term, which may  
13 be renewed in accordance with paragraph (1). A va-  
14 cancy in the position of Executive Director shall be  
15 filled as expeditiously as possible in the manner in  
16 which the original appointment was made.

17 “(5) DUTIES.—In addition to the other activi-  
18 ties required to carry out the authorities and pur-  
19 poses of the Fund under this subchapter, the Execu-  
20 tive Director shall—

21 “(A) be responsible for the day-to-day op-  
22 erations of the Fund;

23 “(B) establish and approve the Operating  
24 Guidance in accordance with section 362(c)(4);

1           “(C) establish and maintain a project ap-  
2           plication origination capability at the Fund that  
3           consists of a staff of qualified transportation in-  
4           frastructure planning professionals;

5           “(D) establish and maintain an analysis  
6           capability at the Fund that consists of a staff  
7           of qualified economics professionals directed to  
8           collect application data, analyze that data, and  
9           report to the Executive Director on qualifica-  
10          tion scores and ranges, measures of uncer-  
11          tainty, and other analyses of applications;

12          “(E) establish and maintain an investment  
13          planning process capability at the Fund that  
14          consists of a staff of qualified project finance  
15          professionals directed to review qualified appli-  
16          cations and to structure Investment Plans; and

17          “(F) establish and maintain a technical as-  
18          sistance capability at the Fund that consists of  
19          a staff of qualified project management profes-  
20          sionals directed to assist those entities receiving  
21          funding from the Fund in the successful execu-  
22          tion of their Investment Plans and to otherwise  
23          implement the funding decisions of the Sec-  
24          retary.



1           “(6) OTHER AUTHORITY.—The Executive Di-  
 2           rector shall have the authority to hire contractors to  
 3           establish and maintain the expertise as described in  
 4           paragraph (5).

5           “(7) COMPENSATION.—The Executive Director  
 6           shall be a position compensated on the General Ex-  
 7           ecutive Schedule.

8           “(b) BOARD OF DIRECTORS.—

9           “(1) ESTABLISHMENT.—There is established  
 10          within the Fund a deliberative body to be known as  
 11          the ‘Board of Directors’.

12          “(2) MEMBERSHIP.—The Board shall be com-  
 13          posed of 8 members, including—

14                 “(A) the Secretary of the Treasury, the  
 15                 Secretary of Commerce, the Secretary of En-  
 16                 ergy, the Secretary of Housing and Urban De-  
 17                 velopment, and the Administrator of the Envi-  
 18                 ronmental Protection Agency, who shall serve  
 19                 as permanent members; and

20                 “(B) 3 executives of the Department of  
 21                 Transportation appointed by the Secretary, of  
 22                 whom—

23                         “(i) not more than 1 shall serve con-  
 24                         currently as—

25                                 “(I) the Deputy Secretary;

- 1                   “(II) the Under Secretary of
- 2                   Transportation for Policy;
- 3                   “(III) the General Counsel;
- 4                   “(IV) the Chief Financial Officer;
- 5                   “(V) the Assistant Secretary of
- 6                   Transportation for Policy; or
- 7                   “(VI) the Assistant Secretary of
- 8                   Transportation for Aviation and
- 9                   International Affairs; and
- 10                  “(ii) not more than 2 shall serve for
- 11                  not longer than 2 years, while concurrently
- 12                  serving as—
- 13                   “(I) the Administrator of the
- 14                   Federal Aviation Administration;
- 15                   “(II) the Administrator of the
- 16                   Federal Highway Administration;
- 17                   “(III) the Administrator of the
- 18                   Federal Railroad Administration;
- 19                   “(IV) the Administrator of the
- 20                   Federal Transit Administration;
- 21                   “(V) the Administrator of the
- 22                   Maritime Administration;
- 23                   “(VI) the Administrator of the
- 24                   Pipeline and Hazardous Materials
- 25                   Safety Administration; or

1                   “(VII) the Administrator of the  
2                   Federal Motor Carrier Safety Admin-  
3                   istration.

4                   “(3) DUTIES.—The Board shall—

5                   “(A) not later than 180 days after the date  
6                   of enactment of the American Infrastructure  
7                   Investment Fund Act, establish and approve the  
8                   Investment Prospectus, in consultation with the  
9                   Fund Advisory Committee;

10                  “(B) on each biennial anniversary of its  
11                  original publication, update the Investment Pro-  
12                  spectus, in consultation with the Fund Advisory  
13                  Committee;

14                  “(C) review Investment Plans, related ap-  
15                  plication materials, and other analyses provided  
16                  to the Board by the Executive Director;

17                  “(D) determine by majority vote whether  
18                  or not to recommend Investment Plans sub-  
19                  mitted by the Executive Director to the Sec-  
20                  retary; and

21                  “(E) certify reports to Congress and other  
22                  publications of the Fund.

23                  “(4) MAJORITY VOTE REQUIRED.—Each action  
24                  or decision by the Board shall be by majority vote  
25                  of all members, whether in person or in absentia.

1 Each member shall be provided a reasonable oppor-  
2 tunity to vote on all matters before the Board.

3 “(c) FUND ADVISORY COMMITTEE.—

4 “(1) ESTABLISHMENT.—Not later than 180  
5 days after the date of enactment of the American  
6 Infrastructure Investment Fund Act, the President  
7 shall establish an advisory committee, to be known  
8 as the ‘Fund Advisory Committee’.

9 “(2) MEMBERSHIP.—

10 “(A) APPOINTMENT.—The President shall  
11 appoint not fewer than 5 people and not more  
12 than 7 people to serve 3-year terms as members  
13 of the Fund Advisory Committee, including 1  
14 member to serve as Chair of the Committee.

15 “(B) QUALIFICATIONS.—Each member  
16 shall have expertise in—

17 “(i) economics and economic analysis;

18 “(ii) project or fund management;

19 “(iii) portfolio or fund management;

20 “(iv) organized labor interests;

21 “(v) environmental interests;

22 “(vi) American business and trade in-  
23 terests;

24 “(vii) rural community and economic  
25 development;

1           “(viii) metropolitan economic develop-  
2           ment and clustering of economic develop-  
3           ment;

4           “(ix) State Department of Transpor-  
5           tation or Metropolitan Planning Organiza-  
6           tion policies and priorities; or

7           “(x) other infrastructure planning, re-  
8           development, and development-related  
9           codes and policies.

10          “(C) REPRESENTATION.—The President  
11          shall ensure that the membership of the Fund  
12          Advisory Committee—

13                 “(i) is bipartisan;

14                 “(ii) is geographically and economi-  
15                 cally balanced; and

16                 “(iii) is balanced in terms of the func-  
17                 tions to be performed by the Fund Advi-  
18                 sory Committee.

19          “(3) ADVICE.—The Fund Advisory Committee  
20          shall advise the Board and the Secretary with re-  
21          spect to—

22                 “(A) the alignment of the Investment Pro-  
23                 spectus with the primary and secondary objec-  
24                 tives, and other elements of the Fund strategy  
25                 described in section 362(e);

1           “(B) the alignment of the framework and  
2 methodology used to determine qualification  
3 scores and uncertainty estimates with the pri-  
4 mary objective, secondary objectives, and the  
5 Fund strategy;

6           “(C) the consistency of the calculation of  
7 qualification scores and uncertainty estimates  
8 with academic standards for analytical rigor  
9 and data quality typically applied to peer-re-  
10 viewed research;

11           “(D) the alignment of investment decision  
12 mechanics and outcomes with the Investment  
13 Prospectus and the requirements under this  
14 subchapter;

15           “(E) the integrity and effectiveness of  
16 Fund operations and performance, including  
17 application evaluation processes, Investment  
18 Plan processes and determinations, and the op-  
19 timization of the Fund’s performance as a port-  
20 folio; and

21           “(F) prospects for the extension of the  
22 Fund’s activities to nontransportation infra-  
23 structure sectors likely to benefit the United  
24 States, including renewable energy generation,  
25 energy transmission and storage, energy effi-

1           ciency, drinking water and wastewater systems,  
2           and telecommunications.

3           “(4) APPLICABILITY OF FACA.—The Fund Ad-  
4           visory Committee shall be subject to the Federal Ad-  
5           visory Committee Act (5 U.S.C. App.).

6   **“§ 364. Fund authorities and assistance**

7           “(a) AGREEMENTS WITH OTHER ORGANIZATIONS.—  
8   The Fund may—

9           “(1) enter into an agreement with any organi-  
10          zation within the Department of Transportation to  
11          obtain necessary technical expertise and assistance;  
12          and

13          “(2) request any Federal agency to detail em-  
14          ployees to the Fund for purposes of carrying out its  
15          duties under this subchapter.

16          “(b) FEES FOR SERVICES.—

17          “(1) ADMINISTRATIVE FEES.—The Fund may  
18          establish and collect fees from eligible funding recipi-  
19          ents, including application and processing fees and  
20          other fees associated with the costs of loan servicing,  
21          at a level sufficient to cover all or a portion of the  
22          administrative costs to the Federal Government of  
23          providing funding assistance and servicing the credit  
24          instruments entered into under this subchapter.

1           “(2) OTHER FEES.—The Fund may establish  
2           and collect fees from eligible funding recipients at a  
3           level sufficient to cover all or a portion of the costs  
4           of expert firms, including counsel in the field of mu-  
5           nicipal and project finance, and financial advisors to  
6           assist with underwriting, credit analysis, or other  
7           independent reviews, as appropriate.

8           “(3) LIMITATION.—The Fund may not collect  
9           fees under paragraph (1) or (2) that originate as a  
10          loan or a debt obligation guaranteed by the Federal  
11          Government.

12          “(4) AVAILABILITY OF AMOUNTS.—Amounts  
13          collected under paragraphs (1) and (2) shall be  
14          available to be expended to carry out the duties  
15          under this subchapter.

16          “(c) PLANNING AND FEASIBILITY LOANS.—

17                 “(1) IN GENERAL.—The Fund may provide  
18                 loans, which may be forgivable, to eligible funding  
19                 recipients to fund activities related to the planning,  
20                 preparation, or design of an eligible project proposal,  
21                 including costs associated with—

22                         “(A) planning and formulating optimal  
23                         project design;

24                         “(B) assessing project technical feasibility;

25                         and



1           “(C) assessing potential project perform-  
2           ance.

3           “(2) LOAN PROGRAM CRITERIA.—In providing  
4           loans under this subsection, the Fund shall give pri-  
5           ority to activities that are likely to lead to projects  
6           that—

7           “(A) advance the objectives set forth in  
8           section 362(b); and

9           “(B) are consistent with the strategy de-  
10          scribed in section 362(c).

11          “(3) FEDERAL SHARE.—The Fund may enter  
12          into a loan agreement with an eligible recipient in  
13          which the Fund agrees to pay up to 100 percent of  
14          eligible planning and feasibility costs of an eligible  
15          project under this subsection.

16          “(4) ELIGIBLE COSTS.—Loan amounts received  
17          under this subsection may be used for—

18          “(A) any activity reasonably necessary to  
19          obtain Federal, State, and local permits, li-  
20          censes, and approvals for an eligible project, in-  
21          cluding—

22                  “(i) concept development and prelimi-  
23                  nary design;

24                  “(ii) economic and environmental  
25                  analyses; and

1                   “(iii) application, licensing, and per-  
2                   mit fees; or

3                   “(B) the preparation of financial analyses  
4                   and other economic analyses that are reason-  
5                   ably necessary to secure funding to implement  
6                   an eligible project.

7                   “(5) ALIGNMENT WITH INVESTMENT PRO-  
8                   SPECTUS.—The Fund may not provide a loan for a  
9                   project under this subsection unless the application  
10                  materials demonstrate that the eligible project is  
11                  aligned with the strategy outlined in the Investment  
12                  Prospectus.

13                  “(6) DESIGNATION FOR RECEIPT OF CERTAIN  
14                  FUNDS.—If a non-Federal governmental entity,  
15                  agency, or instrumentality is carrying out the plan-  
16                  ning and feasibility activities, the eligible funding re-  
17                  cipient may designate such entity, agency, or instru-  
18                  mentality to receive loan amounts for such activities  
19                  directly from the Fund.

20                  “(d) DIRECT LOANS AND LOAN GUARANTEES.—

21                         “(1) DIRECT LOANS.—

22                                 “(A) AGREEMENTS.—The Fund is author-  
23                                 ized to make direct loans to eligible funding re-  
24                                 cipients for eligible projects on such terms and  
25                                 conditions, and containing such covenants, rep-

1           resentations, warranties, and requirements, in-  
2           cluding required audits, as the Fund determines  
3           appropriate, in accordance with the provisions  
4           under this subchapter, the Operating Guidance,  
5           and all other statutory and regulatory require-  
6           ments.

7           “(B) APPROVED INVESTMENT PLAN.—Di-  
8           rect loans made under this paragraph—

9                   “(i) may only be used to fund eligible  
10                   project costs covered in an Investment  
11                   Plan approved by the Secretary; and

12                   “(ii) are subject to the terms and con-  
13                   ditions of the approved Investment Plan.

14           “(C) TERMS, CONDITIONS, AND LIMITA-  
15           TIONS.—Direct loans made under this para-  
16           graph will be on such terms, conditions, and  
17           limitations as the Executive Director may pre-  
18           scribe, except that—

19                   “(i) the Fund may not provide credit  
20                   assistance to any prospective borrower un-  
21                   less such assistance—

22                           “(I) is necessary—

23                                   “(aa) to alleviate a credit  
24                                   market imperfection; or

1                   “(bb) to achieve specified  
2                   Federal objectives by providing  
3                   credit assistance; and

4                   “(II) is the most efficient way to  
5                   meet such objectives on a borrower-  
6                   by-borrower basis;

7                   “(ii) loans made under this paragraph  
8                   may not be subordinated to other debt con-  
9                   tracted by the borrower or any other  
10                  claims against the borrower in case of de-  
11                  fault unless such subordination is nec-  
12                  essary to achieve Federal objectives, con-  
13                  sistent with the criteria and policies set  
14                  forth in the Operating Guidance;

15                  “(iii) direct loans or interest supple-  
16                  ments on loan guarantees shall be at an in-  
17                  terest rate that is set by reference to a  
18                  benchmark interest rate (yield) on market-  
19                  able Treasury securities with a similar ma-  
20                  turity to the direct loans being made or the  
21                  non-Federal loans being guaranteed, and  
22                  includes any necessary credit risk premium  
23                  at a level consistent with the interest rate  
24                  policy set forth in the Operating Guidance;

25                  “(iv) the Executive Director—

1           “(I) shall prescribe explicit  
2 standards for use in periodically as-  
3 ssuming the credit risk of new and ex-  
4 isting direct loans and guaranteed  
5 loans; and

6           “(II) may not extend credit as-  
7 sistance without determining that  
8 there is a reasonable assurance of re-  
9 payment;

10          “(v) new direct loans may not be obli-  
11 gated and new loan guarantees may not be  
12 committed except to the extent that appro-  
13 priations of budget authority to cover their  
14 costs are made in advance, as required  
15 under section 504 of the Federal Credit  
16 Reform Act of 1990 (2 U.S.C. 661c);

17          “(vi) the total principal amount of the  
18 direct loan or loan guarantee may not ex-  
19 ceed—

20               “(I) the lower of 70 percent of  
21 total eligible project cost less the per-  
22 centage of eligible project costs that  
23 are otherwise funded by the Fund; or

24               “(II) another level prescribed in  
25 the Operating Guidance; and

1           “(vii) notwithstanding any other pro-  
2 vision of law relating to the acquisition,  
3 handling, or disposal of property by the  
4 Federal Government, the Fund may com-  
5 plete, recondition, reconstruct, renovate,  
6 repair, maintain, operate, or sell any prop-  
7 erty acquired by the Fund under this sub-  
8 chapter.

9           “(D) REPAYMENT.—

10           “(i) POLICIES.—The Fund shall—

11           “(I) adhere to the policies set  
12 forth in the Operating Guidance con-  
13 cerning repayment terms; and

14           “(II) establish repayment terms  
15 for each direct loan based on the pro-  
16 jected cash flow from project revenues  
17 or other repayment sources.

18           “(ii) MATURITY DATE.—The final ma-  
19 turity date of a direct loan under this  
20 paragraph—

21           “(I) shall not exceed 90 percent  
22 of the estimated useful economic life  
23 of the asset being financed, except  
24 under conditions set forth in the Op-  
25 erating Guidance; and

1                   “(II) may not be later than the  
2                   estimated useful economic life of the  
3                   asset being financed.

4                   “(E) RISK ASSESSMENT.—Before entering  
5                   in any agreement under this section, the Execu-  
6                   tive Director shall complete a risk assessment  
7                   of the project to be funded. Requirements for  
8                   risk assessment shall be outlined in the Oper-  
9                   ating Guidance.

10                  “(2) LOAN GUARANTEES.—

11                   “(A) IN GENERAL.—The Fund is author-  
12                   ized to provide loan guarantees to eligible fund-  
13                   ing recipients on such terms and conditions and  
14                   containing such covenants, representations,  
15                   warranties, and requirements (including re-  
16                   quired audits) as the Fund determines appro-  
17                   priate, in accordance with the provisions under  
18                   this subchapter, the Operating Guidance, and  
19                   all other statutory and regulatory requirements.

20                   “(B) APPROVED INVESTMENT PLAN.—  
21                   Loan guarantees provided under this para-  
22                   graph—

23                   “(i) may only cover eligible project  
24                   costs in an approved Investment Plan; and

1                   “(ii) are subject to the terms and con-  
2                   ditions of the approved Investment Plan.

3                   “(C) TERMS, CONDITIONS, AND LIMITA-  
4                   TIONS.—

5                   “(i) IN GENERAL.—The terms, condi-  
6                   tions, and limitations of a guaranteed loan  
7                   shall comply with the terms, conditions,  
8                   and limitations set forth in paragraph (1)  
9                   for a direct loan, including maximum Fund  
10                  share requirements, except that the inter-  
11                  est rate on the guaranteed loan and any  
12                  repayment features shall be negotiated be-  
13                  tween the eligible funding recipient and the  
14                  lender in accordance with the policies set  
15                  forth in the Operating Guidance, and with  
16                  the consent of the Secretary.

17                  “(ii) INCOME EXCLUDED.—A loan  
18                  may not be guaranteed under this para-  
19                  graph if—

20                         “(I) the income from such loan is  
21                         excluded from gross income for the  
22                         purposes of chapter 1 of the Internal  
23                         Revenue Code of 1986; or

24                         “(II) the guarantee provides sig-  
25                         nificant collateral or security, as de-



1           terminated by the Executive Director,  
2           for other obligations generating in-  
3           come that is similarly excluded.

4           “(iii) FEES.—Fees or premiums for a  
5           loan guarantee or insurance coverage shall  
6           be set at levels that minimize the cost to  
7           the Government (as defined in section  
8           502(5) of the Federal Credit Reform Act  
9           of 1990 (2 U.S.C. 661a(5))) of such cov-  
10          erage, while supporting achievement of the  
11          program’s objectives, in accordance with  
12          policies set forth in the Operating Guid-  
13          ance.

14          “(iv) PERCENT GUARANTEED.—A  
15          loan guarantee under this paragraph may  
16          not exceed 80 percent of the loss of the  
17          loan. Borrowers who pose less of a risk  
18          shall receive a lower guarantee as a per-  
19          centage of the loan amount.

20          “(v) CRITERIA.—A loan may not be  
21          guaranteed under this paragraph unless  
22          the Executive Director determines that—

23                  “(I) the lender is responsible;

24                  and

1                   “(II) adequate provision is made  
2                   for servicing the loan on reasonable  
3                   terms.

4                   “(vi) CONCLUSIVE EVIDENCE.—Any  
5                   guarantee shall be conclusive evidence  
6                   that—

7                   “(I) such guarantee has been  
8                   properly obtained;

9                   “(II) the underlying loan quali-  
10                  fied for such guarantee; and

11                  “(III) such guarantee is pre-  
12                  sumed to be valid, legal, and enforce-  
13                  able, unless such guarantee was ob-  
14                  tained through fraud or material mis-  
15                  representation by the holder.

16                  “(vii) EFFECT OF DEFAULT.—If, as a  
17                  result of a default by a borrower under a  
18                  guaranteed loan, after the holder of the  
19                  loan has made such further collection ef-  
20                  forts and instituted such enforcement pro-  
21                  ceedings as the Executive Director may re-  
22                  quire, the Executive Director determines  
23                  that the holder has suffered a loss, the Ex-  
24                  ecutive Director—

1           “(I) shall pay to the holder not  
2           more than 80 percent of such loss, as  
3           specified in the guarantee contract;

4           “(II) upon making such payment,  
5           shall be subrogated to all the rights of  
6           the recipient of the payment; and

7           “(III) shall be entitled to recover  
8           from the borrower the amount of any  
9           payments made pursuant to any guar-  
10          antee entered into under this para-  
11          graph.

12          “(viii) ENFORCEMENT.—The Attorney  
13          General shall take such action as may be  
14          appropriate to enforce any right accruing  
15          to the United States as a result of the  
16          issuance of any loan guarantee under this  
17          paragraph.

18          “(ix) SAVINGS PROVISION.—Nothing  
19          in this paragraph may be construed to pre-  
20          clude any forbearance for the benefit of the  
21          borrower, which may be agreed upon by  
22          the Executive Director, if budget authority  
23          for any resulting modification cost (as de-  
24          fined under section 502 of the Congres-

1                   sional Budget Act of 1974 (2 U.S.C.  
2                   661a)) is available.

3                   “(D) REPAYMENT.—The Fund shall ad-  
4                   here to policies set forth in the Operating Guid-  
5                   ance concerning repayment terms and shall es-  
6                   tablish repayment terms for each direct loan  
7                   based on the projected cash flow from project  
8                   revenues or other repayment sources.

9                   “(E) RISK ASSESSMENT.—Requirements  
10                  for risk assessment shall be outlined in the Op-  
11                  erating Guidance.

12                  “(e) APPLICATION EVALUATION AND QUALIFICA-  
13                  TION.—

14                  “(1) APPLICATION ELIGIBILITY STANDARD.—  
15                  An application for financial assistance from the  
16                  Fund may not be considered unless—

17                         “(A) funding recipient or recipients,  
18                         project or program of related projects, and as-  
19                         sociated project costs identified in the applica-  
20                         tion are eligible for such funding under this  
21                         subchapter;

22                         “(B) eligible project costs identified in the  
23                         application—

24                                 “(i) are greater than \$50,000,000; or

1           “(ii) if the application is for a project  
2           or program of related projects located en-  
3           tirely in a rural area, are greater than  
4           \$10,000,000;

5           “(C) the application identifies financial as-  
6           sistance from sources outside of the Fund equal  
7           to at least 30 percent of the total eligible  
8           project costs;

9           “(D) the application identifies project ben-  
10          efits that are distributed broadly, either at a  
11          national or a regional level; and

12          “(E) the applicant is not ineligible to re-  
13          ceive Federal loans, loan guarantees, or insur-  
14          ance due to a delinquency on Federal tax or  
15          non-tax debts, including judgment liens against  
16          property for a debt to the Federal Government.

17          “(2) RESOLUTION OF DEBTS.—The Fund shall  
18          use credit bureaus as a screening tool and ask appli-  
19          cants about delinquencies described in paragraph  
20          (1)(E) on the application form. An application from  
21          an applicant that is delinquent on a debt to the Fed-  
22          eral Government may not be processed until after  
23          the applicant satisfactorily resolves the debts in com-  
24          pliance with section 3720B of title 31, United States

1 Code, and section 285.13 of title 31, Code of Fed-  
2 eral Regulations.

3 “(3) QUALIFICATION SCORE.—

4 “(A) ASSIGNMENT.—The Fund shall as-  
5 sign to each eligible application a single numer-  
6 ical factor, which shall be—

7 “(i) based upon an evaluation of the  
8 information and data collected from the  
9 applicant or otherwise obtained in the  
10 course of due diligence on the application;

11 “(ii) referred to as the ‘qualification  
12 score’; and

13 “(iii) equal to the ratio between the  
14 present value of benefits to the present  
15 value of costs reasonably expected to result  
16 from the funding of the project or projects  
17 proposed in the application.

18 “(B) CALCULATION.—The calculation of  
19 the qualification score shall be determined  
20 through a consistently and transparently ap-  
21 plied analytic and systematic framework. In  
22 order to indicate the potential uncertainty of  
23 the qualification score, the Fund shall use a  
24 measure of the uncertainty of expected project  
25 benefits and costs to derive a range of ratio val-

1           ues with the qualification score as the midpoint  
2           of that range.

3           “(C) METHODOLOGY.—The methodology  
4           used to calculate the qualification score and un-  
5           certainty measures shall—

6                   “(i) apply equal weighting to all meas-  
7                   ures of the net present value of benefits  
8                   and costs;

9                   “(ii) include standardized measures of  
10                  the expected uncertainty in both total and  
11                  specific benefits and costs associated with  
12                  the project; and

13                  “(iii) include a descriptive statement  
14                  delineating the significant factors and  
15                  analysis that went into determination of  
16                  the score and the range.

17          “(D) PUBLICATION.—

18                  “(i) INVESTMENT PROSPECTUS.—The  
19                  methodology of the framework for calcu-  
20                  lating the qualification score, including the  
21                  specific mechanics of its calculation, shall  
22                  be published in the Investment Prospectus.

23                  “(ii) METHODOLOGY.—The quan-  
24                  tification score, the methodology used to  
25                  calculate the qualification score, the cal-

1                    culation of the qualification score, and the  
2                    measure of uncertainty shall be—

3                    “(I) provided to the applicant not  
4                    later than 15 days after their final de-  
5                    termination; and

6                    “(II) published on the Fund’s  
7                    website not later than 30 days after  
8                    their final determination.

9                    “(4) APPLICATION CERTIFICATION.—The Exec-  
10                  utive Director may not certify an application as  
11                  qualified for financial assistance on the basis of an  
12                  evaluation of the information and data collected  
13                  from the applicant unless the Executive Director de-  
14                  termines that the application’s qualification score—

15                  “(A) has been calculated on the basis of  
16                  data, estimates, and assumptions that are de-  
17                  fensible according to accepted standards of eco-  
18                  nomic analysis;

19                  “(B) appears valid based on efforts by the  
20                  Fund to conduct due diligence and verification;

21                  “(C) is greater than the threshold for qual-  
22                  ification published in the Investment Pro-  
23                  spectus; and

24                  “(D) is competitive with scores issued to  
25                  applications currently under consideration and



1 scores issued to applications previously funded  
2 under this section, after taking into account the  
3 extent to which the application under consider-  
4 ation, in order of priority—

5 “(i) advances the objectives of the  
6 Fund set forth in section 362(b);

7 “(ii) addresses a special infrastructure  
8 investment challenge due to cost, com-  
9 plexity, cross-jurisdictional scope, multi-  
10 modal features, or the use of innovative  
11 technologies;

12 “(iii) provides a cost-effective ap-  
13 proach to achieving the benefits described  
14 in the application relative to alternative ap-  
15 proaches to achieving comparable benefits,  
16 after taking into account the estimated un-  
17 certainty in measures of costs and benefits  
18 associated with the project;

19 “(iv) combines amounts received from  
20 the Fund with other revenue sources to le-  
21 verage substantial co-investment from non-  
22 Federal sources;

23 “(v) delivers revenue streams from  
24 public or private sources dedicated to pay  
25 debt service, meet ongoing operating ex-

1                   penses, or provide for needed maintenance  
2                   and capital renewal over the life cycle of  
3                   the funded asset; and

4                   “vi) encourages the use of innovative  
5                   procurement, asset management, or financ-  
6                   ing to optimize the all-in-life-cycle cost-ef-  
7                   fectiveness of a project.

8                   “(f) INVESTMENT PLANS.—

9                   “(1) QUALIFIED APPLICATION REQUIRE-  
10                  MENT.—After an application is certified by the Ex-  
11                  ecutive Director as qualified under subsection (e)(4),  
12                  the Executive Director and the applicant shall enter  
13                  a process for producing a mutually agreeable Invest-  
14                  ment Plan. Financial assistance may not be provided  
15                  to an applicant under this section unless the appli-  
16                  cant’s Investment Plan has been recommended by  
17                  the Board and approved by the Secretary.

18                  “(2) INVESTMENT PLANNING PROCESS.—The  
19                  Fund shall establish an investment planning process  
20                  for determining the level, form, and terms of finan-  
21                  cial assistance to be offered by the Fund, including  
22                  a mutually agreeable financing package that—

23                         “(A) is adequate to fund the project or  
24                         projects included in the application;

1           “(B) maximizes total expected project ben-  
2           efits relative to total expected costs; and

3           “(C) considers the portion of total costs to  
4           be financed by the Fund.

5           “(3) CONSIDERATIONS.—When considering the  
6           appropriate level and form of Fund resources to in-  
7           clude in an Investment Plan, the Fund shall—

8           “(A) consider the qualification score  
9           achieved by the application relative to other  
10          current applications and previously funded ap-  
11          plications;

12          “(B) strive to make investment plan deci-  
13          sions on the basis of maximizing total net bene-  
14          fits relative to cost; and

15          “(C) consider—

16               “(i) the amount of Fund budgetary  
17               resources required to complete a financing  
18               package;

19               “(ii) the percentage of Federal re-  
20               sources included in the Investment Plan in  
21               the form of grants;

22               “(iii) the level of certainty of the pro-  
23               posed net benefits, including the risks to  
24               the Federal taxpayer and the project spon-

1                   sor in the event of project cost overrun or  
2                   failure; and

3                   “(iv) the percentage of eligible project  
4                   costs to be funded through non-Federal re-  
5                   sources pledged by the applicant to com-  
6                   plete a financing package.

7                   “(4) INVESTMENT PLANS.—As part of the in-  
8                   vestment planning process—

9                   “(A) the Fund shall have the sole discre-  
10                  tion to determine the terms of assistance to be  
11                  offered to applicants, subject to the provisions  
12                  under this subchapter, the availability of fund-  
13                  ing, and any other statutory and regulatory re-  
14                  quirements;

15                  “(B) if the Fund and the applicant are  
16                  able to reach mutually agreeable terms, the  
17                  Fund shall record the determination on Fund  
18                  assistance and the details of the complete fi-  
19                  nancing package in an Investment Plan;

20                  “(C) the Fund may not approve an Invest-  
21                  ment Plan that does not identify a complete fi-  
22                  nancing package; and

23                  “(D) the Fund is not required or com-  
24                  pelled to reach agreement on an Investment  
25                  Plan.

1           “(5) SUBMISSION TO BOARD.—The Executive  
2 Director shall advance Investment Plans for quali-  
3 fied applications to the Board at regular submission  
4 intervals, as set forth in the Operating Guidance.

5           “(6) CONFLICT OF INTEREST PROTECTIONS.—  
6 The Secretary of Transportation and the Fund shall  
7 jointly establish, in operating procedures and in the  
8 Operating Guidance, communications practices and  
9 compliance procedures that protect professional staff  
10 of the Fund who are responsible for negotiating In-  
11 vestment Plans from outside or otherwise inappro-  
12 priate influence, and conflicts of interest, including  
13 necessary restrictions on communications between  
14 staff of the Fund who are responsible for the invest-  
15 ment planning process and individuals and organiza-  
16 tions within and outside the Department of Trans-  
17 portation, including—

18                   “(A) the Board;

19                   “(B) the Office of the Secretary;

20                   “(C) the Secretary; and

21                   “(D) others needed to safeguard the ability  
22 of the Fund to fairly and independently formu-  
23 late Investment Plans under this subsection.

24           “(g) FUNDING DECISIONS.—

1           “(1) INVESTMENT PLAN SUBMISSION REQUIRE-  
2           MENT.—The Board may not consider recommending  
3           an application for funding before receiving an In-  
4           vestment Plan from the Executive Director.

5           “(2) APPLICATION FUNDING RECOMMENDA-  
6           TION.—Not later than 15 days after receiving an In-  
7           vestment Plan from the Executive Director, the  
8           Board shall—

9                   “(A) vote on whether to recommend fund-  
10                  ing for the Investment Plan;

11                  “(B) notify the Secretary of the outcome  
12                  of such vote; and

13                  “(C) if funding is recommended, forward  
14                  the Investment Plan to the Secretary for ap-  
15                  proval.

16           “(3) NO MODIFICATION.—Neither the Board  
17           nor the Secretary may modify any Investment Plan.

18           “(4) FUNDING CONSIDERATION.—

19                   “(A) DETERMINATION.—After considering  
20                  an Investment Plan recommended by the  
21                  Board, the Secretary shall approve or reject the  
22                  Investment Plan.

23                   “(B) APPROVAL.—If the Investment Plan  
24                  is approved by the Secretary, it shall be funded

1 in accordance with the provisions of the Invest-  
2 ment Plan.

3 “(C) REJECTION.—If the Investment Plan  
4 is rejected by the Secretary, the Investment  
5 Plan—

6 “(i) shall be returned to the Executive  
7 Director with a detailed justification for  
8 rejecting the Investment Plan, which shall  
9 be forwarded to the applicant; and

10 “(ii) may be reconsidered by the Fund  
11 not earlier than 1 year after such date of  
12 return.

13 “(h) PROJECT SPONSORSHIP; PUBLIC BENEFIT  
14 ANALYSIS; LEGAL COMPLIANCE.—

15 “(1) COMPLIANCE WITH APPLICABLE LAWS.—

16 “(A) IN GENERAL.—Subject to subpara-  
17 graphs (B) and (C), the Fund shall determine  
18 which requirements under this title or title 23  
19 shall be applicable to projects receiving financial  
20 assistance under this subchapter that would  
21 otherwise be eligible for financial assistance  
22 under such titles.

23 “(B) LABOR STANDARDS.—

24 “(i) IN GENERAL.—All laborers and  
25 mechanics employed on projects assisted in

1 whole or in part by and through the Fund  
2 pursuant to this subchapter shall be paid  
3 wages at rates not less than those pre-  
4 vailing on projects of a character similar in  
5 the locality as determined by the Secretary  
6 of Labor in accordance with subchapter IV  
7 of chapter 31 of title 40.

8 “(ii) AUTHORITY; FUNCTIONS.—With  
9 respect to the labor standards specified in  
10 this subparagraph, the Secretary of Labor  
11 shall have the authority and functions set  
12 forth in Reorganization Plan Numbered 14  
13 of 1950 (64 Stat. 1267; 5 U.S.C. App.)  
14 and section 3145 of title 40, United States  
15 Code.

16 “(iii) REQUIREMENTS.—Projects  
17 funded directly by or assisted in whole or  
18 in part by and through the Fund pursuant  
19 to this subchapter shall be subject to the  
20 requirements of section 5333(b) of title 49,  
21 United States Code.

22 “(C) PLANNING AND ENVIRONMENTAL  
23 LAWS.—A project that receives financial assist-  
24 ance under this subchapter shall comply with—



1           “(i) the applicable planning and pro-  
2           gramming requirements under section 134  
3           and 135 of title 23; and

4           “(ii) all applicable environmental laws  
5           and requirements, including the National  
6           Environmental Policy Act of 1969 (42  
7           U.S.C. 4321 et seq.) and the National His-  
8           toric Preservation Act of 1966 (16 U.S.C.  
9           470 et seq.).

10          “(2) LEAD AGENCY.—

11                 “(A) IN GENERAL.—The Department of  
12                 Transportation shall be the Federal lead agency  
13                 in the environmental review process for a  
14                 project that receives financial assistance under  
15                 this subchapter. Subject to subparagraphs (B)  
16                 through (D), the Secretary of Transportation  
17                 may delegate this responsibility to an operating  
18                 administration.

19                 “(B) JOINT LEAD FEDERAL AGENCY.—  
20                 Nothing in this paragraph precludes another  
21                 Federal agency from being a joint lead agency  
22                 in accordance with the regulations adopted by  
23                 the President’s Council on Environmental Qual-  
24                 ity.

1           “(C) JOINT LEAD STATE AGENCY.—A non-  
2 Federal government entity, agency, or instru-  
3 mentality receiving funds under this subchapter  
4 may—

5           “(i) serve as a joint lead agency with  
6 the Department of Transportation under  
7 the National Environmental Policy Act of  
8 1969 (42 U.S.C. 4321 et seq.); and

9           “(ii) at the discretion of the lead Fed-  
10 eral agency, prepare any environmental  
11 document required in support of the  
12 project if the lead Federal agency—

13           “(I) furnishes guidance in such  
14 preparation; and

15           “(II) independently evaluates, ap-  
16 proves, and adopts the State or local  
17 government’s environmental docu-  
18 mentation before taking any action on  
19 the project.

20           “(D) NONGOVERNMENTAL FUNDING RE-  
21 CIPIENTS.—If a project is undertaken by a non-  
22 governmental entity, the non-Federal govern-  
23 ment entity, agency, or instrumentality cospon-  
24 sor of the project shall—

1                   “(i) serve as a joint lead agency with  
2                   the Department of Transportation; and

3                   “(i) have the authority to prepare the  
4                   environmental documents described in sub-  
5                   paragraph (C)(ii).

6                   “(3) DETERMINATION OF APPLICABLE MODAL  
7                   REQUIREMENTS.—If a project has cross-modal com-  
8                   ponents, the Fund may designate the specific re-  
9                   quirements that shall apply to the project.

10                  “(4) USE OF AMERICAN IRON, STEEL, AND  
11                  MANUFACTURED GOODS.—

12                   “(A) IN GENERAL.—None of the funds  
13                   made available under this subchapter may be  
14                   used for a project for the construction, alter-  
15                   ation, maintenance, or repair of a public build-  
16                   ing or public work unless all of the iron, steel,  
17                   and manufactured goods used in the project are  
18                   produced in the United States.

19                   “(B) EXCEPTION.—Subparagraph (A)  
20                   shall not apply in any case or category of cases  
21                   in which the Secretary finds that—

22                   “(i) applying subparagraph (A) would  
23                   be inconsistent with the public interest;

24                   “(ii) iron, steel, and the relevant man-  
25                   ufactured goods are not produced in the

1 United States in sufficient and reasonably  
2 available quantities and of a satisfactory  
3 quality; or

4 “(iii) inclusion of iron, steel, and man-  
5 ufactured goods produced in the United  
6 States will increase the cost of the overall  
7 project by more than 25 percent.

8 “(C) PUBLICATION OF WAIVERS.—If the  
9 Secretary determines that it is necessary to  
10 waive the application of subparagraph (A)  
11 based on a finding under subparagraph (B), the  
12 head of the department or agency shall publish  
13 in the Federal Register a detailed written jus-  
14 tification as to why the provision is being  
15 waived.

16 “(D) INTERNATIONAL AGREEMENTS.—  
17 This paragraph shall be applied in a manner  
18 consistent with United States obligations under  
19 international agreements.

20 “(i) INVESTMENT-GRADE RATING REQUIREMENT.—  
21 The Fund shall maintain a portfolio of projects whose av-  
22 erage rating is not less than investment grade.

23 **“§ 365. Studies and reports**

24 “(a) ANNUAL FINANCIAL AUDITS.—

1           “(1) IN GENERAL.—The Fund shall be subject  
2           to an annual financial audit by an independent pub-  
3           lic accounting firm selected by the Board to ensure  
4           that its operations meet generally accepted account-  
5           ing principles.

6           “(2) DISSEMINATION.—The Fund shall—

7           “(A) submit the results of each audit  
8           under paragraph (1) to the Committee on Com-  
9           merce, Science, and Transportation of the Sen-  
10          ate and the Committee on Transportation and  
11          Infrastructure of the House of Representatives;  
12          and

13          “(B) post such audit results on the Fund’s  
14          website.

15          “(b) COMPTROLLER GENERAL REPORT.—

16          “(1) IN GENERAL.—Not later than 5 years  
17          after the date of enactment of the American Infra-  
18          structure Investment Fund Act, the Comptroller  
19          General of the United States shall prepare and sub-  
20          mit to the Committee on Commerce, Science, and  
21          Transportation of the Senate and the Committee on  
22          Transportation and Infrastructure in the House of  
23          Representatives a report that evaluates the oper-  
24          ations of the Fund and assesses the effectiveness of  
25          the Fund at facilitating and financing infrastructure

1 projects. The Comptroller General shall provide peri-  
2 odic oversight and monitoring of the Fund as it is  
3 established and report on such oversight, as agreed  
4 to with the appropriate congressional committees.

5 “(2) CONTENTS.—

6 “(A) IN GENERAL.—The Comptroller Gen-  
7 eral shall review and include in the report under  
8 paragraph (1), at minimum, the following:

9 “(i) The type of projects selected and  
10 financing used.

11 “(ii) The level of Federal funding pro-  
12 vided to support the Fund and the projects  
13 selected for funding.

14 “(iii) The level of private sector funds  
15 that were contributed to specific projects.

16 “(iv) The process, criteria, and anal-  
17 ysis used to select projects and how the  
18 process, criteria, and analysis could be im-  
19 proved.

20 “(v) The monitoring and evaluation  
21 processes the Fund uses to determine if an  
22 individual project is meeting its objectives.

23 “(B) CONSIDERATIONS.—The Government  
24 Accountability Office shall—

1                   “(i) analyze current trends in the fi-  
2                   nancing infrastructure in the United  
3                   States;

4                   “(ii) identify lessons the analysis  
5                   under clause (i) may imply for improve-  
6                   ments or modifications to the structure or  
7                   operations of the Fund;

8                   “(iii) analyze the experiences of other  
9                   industrialized countries that have devel-  
10                  oped alternative forms of financing public  
11                  infrastructure; and

12                  “(iv) identify lessons that the foreign  
13                  experiences under clause (iii) may have for  
14                  the operations and efficiency of the Fund.

15                  “(c) BIENNIAL REPORT.—

16                  “(1) IN GENERAL.—Every 2 years after the  
17                  date of the enactment of the American Infrastruc-  
18                  ture Investment Fund Act, the Board, in consulta-  
19                  tion with the Director of the Office of Management  
20                  and Budget and the Fund Advisory Committee—

21                  “(A) shall prepare a report that—

22                  “(i) evaluates the Fund’s perform-  
23                  ance; and

1 “(ii) includes an assessment of the  
2 Fund as a model for infrastructure invest-  
3 ment; and

4 “(B) may include a recommendation in the  
5 report under subparagraph (A) on whether to  
6 extend the Fund’s activities to nontransporta-  
7 tion infrastructure sectors likely to benefit the  
8 United States, including—

9 “(i) renewable energy generation;

10 “(ii) energy transmission and storage;

11 “(iii) energy efficiency;

12 “(iv) drinking water and wastewater  
13 systems;

14 “(v) telecommunications; and

15 “(vi) other infrastructure activities.

16 “(2) DISSEMINATION.—The Board shall—

17 “(A) submit the report prepared under  
18 paragraph (1) to the Committee on Commerce,  
19 Science, and Transportation of the Senate and  
20 the Committee on Transportation and Infra-  
21 structure of the House of Representatives; and

22 “(B) post the report on the Fund’s  
23 website.

24 “(d) INVESTMENT PLAN AND DECISIONS.—Not later  
25 than 90 days after the Board’s decision on an Investment



1 Plan, the Fund Advisory Committee shall post a report  
2 on the Fund’s website that assesses—

3 “(1) the adherence of each funding decision to  
4 the requirements of the Investment Prospectus, Op-  
5 erating Guidance, and this subchapter;

6 “(2) the consistency of funded applications with  
7 the primary objective, the secondary objectives, the  
8 Fund strategy, and the requirements under this sub-  
9 chapter;

10 “(3) the validity of the qualification certifi-  
11 cation of each funded application;

12 “(4) the return on Federal investment likely to  
13 result from each funded Investment Plan; and

14 “(5) the return on total investment likely to re-  
15 sult from each funded Investment Plan.”.

16 (b) AUTHORIZATION OF APPROPRIATIONS.—

17 (1) AMOUNTS AUTHORIZED.—

18 (A) IN GENERAL.—There is authorized to  
19 be appropriated to carry out subchapter IV of  
20 chapter 3 of title 49, United States Code, as  
21 added by subsection (a), \$5,000,000,000 for  
22 each of fiscal years 2014 and 2015.

23 (B) AVAILABILITY OF FUNDS.—Amounts  
24 made available under subparagraph (A) shall  
25 remain available until expended.

1           (2) ADMINISTRATIVE EXPENSES.—Of the  
2 amounts appropriated under paragraph (1), the  
3 Fund may expend, to pay the reasonable costs of ad-  
4 ministering such subchapter IV, inclusive of any fees  
5 collected under such subchapter—

6                   (A) not more than \$50,000,000 in fiscal  
7 year 2014; and

8                   (B) not more than \$51,000,000 in fiscal  
9 year 2015.

10 **SEC. 3. NATIONAL INFRASTRUCTURE INVESTMENT**  
11 **GRANTS.**

12           (a) ESTABLISHMENT OF PROGRAM.—Chapter 55 of  
13 title 49, United States Code, is amended by adding at the  
14 end the following:

15           “SUBCHAPTER III—FINANCIAL ASSISTANCE

16 **“§ 5581. National infrastructure investment grants**

17           “(a) ESTABLISHMENT OF PROGRAM.—The Secretary  
18 of Transportation shall establish a competitive grant pro-  
19 gram to provide financial assistance for projects that will  
20 have a significant impact on the Nation, a metropolitan  
21 area, or a region.

22           “(b) ELIGIBLE PROJECTS.—An applicant is eligible  
23 for a grant under this section for a project that is part  
24 of, or related to, a transportation improvement, including  
25 projects related to the construction or improvement of—

1 “(1) a passenger or freight rail line;

2 “(2) a highway;

3 “(3) a bridge;

4 “(4) an airport;

5 “(5) an air traffic control system;

6 “(6) a port or marine facility;

7 “(7) an inland waterway;

8 “(8) a transmission or distribution pipeline;

9 “(9) public transportation facilities or systems;

10 “(10) intercity passenger bus or passenger rail  
11 facilities or equipment;

12 “(11) freight rail facilities or equipment; or

13 “(12) planning, preparation, or design of any  
14 project described in paragraphs (1) through (11).

15 “(c) PROJECT SELECTION CRITERIA.—In deter-  
16 mining whether to award a grant to an eligible applicant  
17 under this section, the Secretary shall consider the extent  
18 to which the project—

19 “(1) leverages Federal investment by encour-  
20 aging non-Federal contributions to the project, in-  
21 cluding contributions from public-private partner-  
22 ships;

23 “(2) improves the mobility of people, goods, and  
24 commodities;

1           “(3) incorporates new and innovative tech-  
2 nologies, including intelligent transportation sys-  
3 tems;

4           “(4) improves energy efficiency or reduces  
5 greenhouse gas emissions;

6           “(5) helps maintain or protect the environment,  
7 including reducing air and water pollution;

8           “(6) reduces congestion;

9           “(7) improves the condition of transportation  
10 infrastructure, including bringing it into a state of  
11 good repair;

12           “(8) improves safety, including reducing trans-  
13 portation accidents, injuries, and fatalities;

14           “(9) demonstrates that the proposed project  
15 cannot be readily and efficiently realized without  
16 Federal support and participation; and

17           “(10) enhances national or regional economic  
18 development, growth, and competitiveness.

19           “(d) PRIORITY.—The Secretary shall give priority to  
20 projects that have the highest system performance im-  
21 provement relative to their benefit-cost analysis.

22           “(e) LETTERS OF INTENT.—

23           “(1) IN GENERAL.—The Secretary may issue a  
24 letter of intent to an applicant announcing an inten-  
25 tion to obligate, for a major capital project under

1 this subsection, an amount from future available  
2 budget authority specified in law that is not more  
3 than the amount stipulated as the financial partici-  
4 pation of the Secretary in the project.

5 “(2) NOTIFICATION.—Not later than 30 days  
6 before issuing a letter under paragraph (1), the Sec-  
7 retary shall submit written notification of the pro-  
8 posed letter or agreement to the Committee on Com-  
9 merce, Science, and Transportation of the Senate  
10 and the Committee on Transportation and Infra-  
11 structure of the House of Representatives, which  
12 shall include—

13 “(A) a copy of the proposed letter or  
14 agreement;

15 “(B) the criteria used under subsection (c)  
16 for selecting the project for a grant award; and

17 “(C) a description of how the project meets  
18 such criteria.

19 “(3) COMMITMENT.—An obligation or adminis-  
20 trative commitment may be made only when  
21 amounts are made available. The letter of intent  
22 shall state that the contingent commitment is not an  
23 obligation of the Federal Government, and is subject  
24 to the availability of funds under Federal law and to

1 Federal laws in force or enacted after the date of  
2 the contingent commitment.

3 “(f) FEDERAL SHARE OF NET PROJECT COST.—

4 “(1) IN GENERAL.—The Federal share of a  
5 grant for the project shall not exceed 80 percent of  
6 the project net capital cost.

7 “(2) ESTIMATE.—The Secretary shall estimate  
8 the net project cost based on engineering studies,  
9 studies of economic feasibility, and information on  
10 the expected use of equipment or facilities.

11 “(3) PRIORITY.—The Secretary shall give pri-  
12 ority in allocating future obligations and contingent  
13 commitments to incur obligations to grant requests  
14 seeking a lower Federal share of the project net cap-  
15 ital cost.

16 “(g) COOPERATIVE AGREEMENTS.—

17 “(1) IN GENERAL.—An applicant may enter  
18 into an agreement with any public, private, or non-  
19 profit entity to cooperatively implement any project  
20 funded with a grant under this subchapter.

21 “(2) FORMS OF PARTICIPATION.—Participation  
22 by an entity under paragraph (1) may consist of—

23 “(A) ownership or operation of any land,  
24 facility, vehicle, or other physical asset associ-  
25 ated with the project;

1           “(B) cost-sharing of any project expense or  
2 non-Federal share of the project cost, including  
3 in-kind contributions;

4           “(C) carrying out administration, construc-  
5 tion management, project management, project  
6 operation, or any other management or oper-  
7 ational duty associated with the project; and

8           “(D) any other form of participation ap-  
9 proved by the Secretary.

10       “(h) OVERSIGHT PROGRAM.—

11       “(1) ESTABLISHMENT.—

12           “(A) IN GENERAL.—The Secretary shall  
13 establish an oversight program to monitor the  
14 effective and efficient use of funds authorized to  
15 carry out this section.

16           “(B) MINIMUM REQUIREMENT.—At a min-  
17 imum, the program shall be responsive to all  
18 areas relating to financial integrity and project  
19 delivery.

20       “(2) FINANCIAL INTEGRITY.—

21           “(A) FINANCIAL MANAGEMENT SYS-  
22 TEMS.—The Secretary shall perform annual re-  
23 views that address elements of the applicant’s  
24 financial management systems that affect  
25 projects approved under subsection (a).

1           “(B) PROJECT COSTS.—The Secretary  
2           shall develop minimum standards for estimating  
3           project costs and shall periodically evaluate the  
4           practices of applicants for estimating project  
5           costs, awarding contracts, and reducing project  
6           costs.

7           “(3) PROJECT DELIVERY.—The Secretary shall  
8           perform annual reviews that address elements of the  
9           project delivery system of an applicant, which ele-  
10          ments include one or more activities that are in-  
11          volved in the life cycle of a project from conception  
12          to completion of the project.

13          “(4) RESPONSIBILITY OF THE APPLICANTS.—

14                 “(A) IN GENERAL.—Each applicant shall  
15                 submit to the Secretary for approval such  
16                 plans, specifications, and estimates for each  
17                 proposed project as the Secretary may require.

18                 “(B) APPLICANT SUBRECIPIENTS.—The  
19                 applicant shall be responsible for determining  
20                 that a subrecipient of Federal funds under this  
21                 section has—

22                         “(i) adequate project delivery systems  
23                         for projects approved under this section;  
24                         and



1                   “(ii) sufficient accounting controls to  
2                   properly manage such Federal funds.

3                   “(C) PERIODIC REVIEW.—The Secretary  
4                   shall periodically review the monitoring of sub-  
5                   recipients by the applicant.

6                   “(5) SPECIFIC OVERSIGHT RESPONSIBIL-  
7                   ITIES.—Nothing in this section shall affect or dis-  
8                   charge any oversight responsibility of the Secretary  
9                   specifically provided for under this title or other  
10                  Federal law.

11                  “(i) MAJOR PROJECTS.—

12                  “(1) IN GENERAL.—A recipient of a grant for  
13                  a project under this section with an estimated total  
14                  cost of \$500,000,000 or more, and a recipient for  
15                  such other projects as may be identified by the Sec-  
16                  retary, shall submit to the Secretary for each  
17                  project—

18                          “(A) a project management plan; and

19                          “(B) an annual financial plan.

20                  “(2) PROJECT MANAGEMENT PLAN.—A project  
21                  management plan shall document—

22                          “(A) the procedures and processes that are  
23                          in effect to provide timely information to the  
24                          project decision makers to effectively manage  
25                          the scope, costs, schedules, and quality of, and

1 the Federal requirements applicable to, the  
2 project; and

3 “(B) the role of the agency leadership and  
4 management team in the delivery of the project.

5 “(3) FINANCIAL PLAN.—A financial plan  
6 shall—

7 “(A) be based on detailed estimates of the  
8 cost to complete the project; and

9 “(B) provide for the annual submission of  
10 updates to the Secretary that are based on rea-  
11 sonable assumptions, as determined by the Sec-  
12 retary, of future increases in the cost to com-  
13 plete the project.

14 “(j) OTHER PROJECTS.—A recipient of Federal fi-  
15 nancial assistance for a project under this section with an  
16 estimated total cost of \$100,000,000 or more that is not  
17 covered by subsection (i) shall prepare an annual financial  
18 plan. Annual financial plans prepared under this sub-  
19 section shall be made available to the Secretary for review  
20 upon the request of the Secretary.

21 “(k) OTHER TERMS AND CONDITIONS.—The Sec-  
22 retary shall determine what additional grant terms and  
23 conditions are necessary and appropriate to meet the re-  
24 quirements of this section.

1       “(l) REGULATIONS.—Not later than 1 year after the  
2 date of enactment of the American Infrastructure Invest-  
3 ment Fund Act, the Secretary shall prescribe regulations  
4 to implement this section.

5       “(m) APPLICANT DEFINED.—In this subchapter, the  
6 term ‘applicant’ includes a State, a political subdivision  
7 of a State, government-sponsored authorities and corpora-  
8 tions, and the District of Columbia.

9       “(n) SECRETARIAL OVERSIGHT.—

10           “(1) CONSTRUCTION MANAGEMENT CON-  
11 TRACTS.—The Secretary may use not more than 1  
12 percent of amounts made available in a fiscal year  
13 for capital projects under this subchapter to enter  
14 into contracts to oversee the construction of such  
15 projects.

16           “(2) COMPLIANCE REVIEWS.—The Secretary  
17 may use amounts available under paragraph (1) to  
18 make contracts for safety, procurement, manage-  
19 ment, and financial compliance reviews and audits of  
20 a recipient of amounts under paragraph (1).

21           “(3) FEDERAL COSTS.—The Federal Govern-  
22 ment shall pay the entire cost of carrying out a con-  
23 tract under this subsection.

24       “(o) COMPLIANCE WITH APPLICABLE LAWS.—

1           “(1) LABOR STANDARDS.—The provisions of  
2 subchapter IV of chapter 31 of title 40, shall apply  
3 to funds made available under this subchapter.

4           “(2) PLANNING AND ENVIRONMENTAL LAWS.—  
5 A project that receives financial assistance under  
6 this subchapter shall comply with—

7                   “(A) the applicable planning and program-  
8 ming requirements under sections 134 and 135  
9 of title 23; and

10                   “(B) all applicable environmental laws and  
11 requirements, including the National Environ-  
12 mental Policy Act of 1969 (42 U.S.C. 4321 et  
13 seq.) and the National Historic Preservation  
14 Act of 1966 (16 U.S.C. 470 et seq.).

15           “(p) USER OF AMERICAN IRON, STEEL, AND MANU-  
16 FACTURED GOODS.—

17                   “(1) IN GENERAL.—None of the funds made  
18 available under this subchapter may be used for a  
19 project for the construction, alteration, maintenance,  
20 or repair of a public building or public work unless  
21 all of the iron, steel, and manufactured goods used  
22 in the project are produced in the United States.

23                   “(2) EXCEPTION.—Paragraph (1) shall not  
24 apply in any case or category of cases in which the  
25 Secretary finds that—

1           “(A) applying paragraph (1) would be in-  
2 consistent with the public interest;

3           “(B) iron, steel, and the relevant manufac-  
4 tured goods are not produced in the United  
5 States in sufficient and reasonably available  
6 quantities and of a satisfactory quality; or

7           “(C) inclusion of iron, steel, and manufac-  
8 tured goods produced in the United States will  
9 increase the cost of the overall project by more  
10 than 25 percent.

11           “(3) PUBLICATION OF WAIVERS.—If the Sec-  
12 retary determines that it is necessary to waive the  
13 application of paragraph (1) based on a finding  
14 under paragraph (2), the head of the department or  
15 agency shall publish in the Federal Register a de-  
16 tailed written justification as to why the provision is  
17 being waived.

18           “(4) INTERNATIONAL AGREEMENTS.—This sub-  
19 section shall be applied in a manner consistent with  
20 United States obligations under international agree-  
21 ments.

22           “(q) PERFORMANCE EVALUATION.—

23           “(1) ANNUAL REPORTS.—

24           “(A) IN GENERAL.—The Comptroller Gen-  
25 eral of the United States shall conduct an an-

1 nual assessment to evaluate the overall per-  
2 formance of grants made under the program es-  
3 tablished under subsection (a).

4 “(B) DISSEMINATION.—The Comptroller  
5 General shall submit a report containing the re-  
6 sults of the evaluation under subparagraph (A)  
7 to the Committee on Commerce, Science, and  
8 Transportation of the Senate and the Com-  
9 mittee on Transportation and Infrastructure of  
10 the House of Representatives.

11 “(2) BIENNIAL REPORT.—Not later than 1  
12 year after the date of enactment of the American In-  
13 frastructure Investment Fund Act, and every 6  
14 months thereafter, the Secretary of Transportation  
15 shall submit a report to the congressional commit-  
16 tees set forth in paragraph (1)(B) that documents—

17 “(A) the number of applications received  
18 under this section;

19 “(B) the status of such applications;

20 “(C) the outcome of application evalua-  
21 tions; and

22 “(D) the status of grants awarded under  
23 the program established under subsection (a).

24 “(r) AUTHORIZATION OF APPROPRIATIONS.—There  
25 is authorized to be appropriated to the Secretary

1 \$600,000,000 for each of fiscal years 2014 and 2015 to  
2 carry out this section.”.

3 (b) CONFORMING AMENDMENT.—The table of sec-  
4 tions for chapter 55 of title 49, United States Code, is  
5 amended by adding at the end the following:

“SUBCHAPTER III—FINANCIAL ASSISTANCE

“5581. National infrastructure investment grants.”.

