

118TH CONGRESS
1ST SESSION

S. 2928

To amend the Water Infrastructure Finance and Innovation Act of 2014 to establish payment and performance security requirements for projects, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 26 (legislative day, SEPTEMBER 22), 2023

Mr. KELLY (for himself and Mr. CRAMER) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Water Infrastructure Finance and Innovation Act of 2014 to establish payment and performance security requirements for projects, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Water Infrastructure
5 Subcontractor and Taxpayer Protection Act of 2023”.

1 **SEC. 2. FEDERAL REQUIREMENTS FOR WIFIA ELIGIBILITY**
2 **AND PROJECT SELECTION.**

3 Section 5028(a)(1)(C) of the Water Infrastructure
4 Finance and Innovation Act of 2014 (33 U.S.C.
5 3907(a)(1)(C)) is amended—

6 (1) by striking “The Secretary” and inserting
7 the following:

8 “(i) FINANCING SECURITY FEA-
9 TURES.—The Secretary”; and

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

11 “(ii) CONSTRUCTION PAYMENT AND
12 PERFORMANCE SECURITY.—

13 “(I) IN GENERAL.—The Sec-
14 retary or the Administrator, as appli-
15 cable, shall ensure that the construc-
16 tion of a project carried out with as-
17 sistance under this subtitle has pay-
18 ment and performance security in ac-
19 cordance with this clause.

20 “(II) USE OF STATE OR LOCAL
21 REQUIREMENTS.—The Secretary or
22 the Administrator, as applicable, shall
23 consider subclause (I) to be satisfied
24 with respect to the construction of a
25 project if—

1 “(aa) applicable State or
2 local law requires payment and
3 performance security with respect
4 to the construction; and

5 “(bb) the amount of that
6 payment and performance secu-
7 rity is not less than 50 percent of
8 the total construction contract
9 amount.

10 “(III) USE OF BONDS.—With re-
11 spect to the construction of a project
12 to which no State or local payment
13 and performance security require-
14 ments apply or for which the amount
15 of payment and performance security
16 under applicable State or local pay-
17 ment and performance requirements
18 does not meet the requirement de-
19 scribed in subclause (II)(bb), the Sec-
20 retary or the Administrator, as appli-
21 cable, shall require, for purposes of
22 satisfying subclause (I), that the re-
23 quirements described in paragraphs

1 (1) and (2) of section 3131(b) of title
2 40, United States Code, be met.”.

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