

112TH CONGRESS  
1ST SESSION

# S. 936

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

MAY 10, 2011

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 of 2011”.

1 (b) TABLE OF CONTENTS.—The table of contents for  
 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.
- Sec. 4. Multi-modal transportation funding.

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.—

15 “(1) PRIMARY OBJECTIVE.—The Fund’s pri-  
16 mary objective shall be to invest in infrastructure  
17 projects that provide measurable improvements to  
18 the economic competitiveness of all or part of the  
19 United States by increasing or otherwise improving  
20 economic output, productivity, or competitive com-  
21 mercial advantage.

22 “(2) SECONDARY OBJECTIVES.—The Fund’s  
23 secondary objectives shall be—

24 “(A) to provide funding for projects that  
25 face significant funding barriers due to prob-

1 lems associated with the need to combine re-  
2 sources across multiple jurisdictions or modes  
3 of transportation;

4 “(B) to improve the efficiency or through-  
5 put of a national or regional transportation net-  
6 work by—

7 “(i) improving the integration between  
8 networks; or

9 “(ii) improving the condition, per-  
10 formance, or long-term cost structure of  
11 existing infrastructure;

12 “(C) to improve the safety of transpor-  
13 tation facilities and systems, as measured by  
14 the reduction in risk of transportation-related  
15 crashes, injuries, or deaths; and

16 “(D) to improve the environmental sus-  
17 tainability of a national or regional transpor-  
18 tation network, as measured by—

19 “(i) improvement in energy efficiency;

20 “(ii) reduction in greenhouse gas and  
21 other harmful emissions;

22 “(iii) conservation of natural re-  
23 sources;

24 “(iv) improvement in water quality;



1                   “(v) improvement in infrastructure re-  
2                   silience to environmental hazards and nat-  
3                   ural disasters; and

4                   “(vi) other beneficial environmental  
5                   impacts.

6           “(c) STRATEGY.—

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

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

15                          “(A) target projects or programs of related  
16                          projects with a demonstrated difficulty in ob-  
17                          taining complete financing through other avail-  
18                          able public or private sources of funds, for rea-  
19                          sons including project complexity, modes, or  
20                          other comparable transactional barriers;

21                          “(B) seek to identify appropriate Invest-  
22                          ment Plans for selected projects and programs  
23                          of projects; and

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

1 “(i) promotes greater efficiency in the  
2 movement of freight or the provision of  
3 services;

4 “(ii) promotes greater efficiency in the  
5 movement of people;

6 “(iii) integrates multiple transpor-  
7 tation modes in the movement of pas-  
8 sengers or freight;

9 “(iv) promotes the use of innovation  
10 and best practices in the planning, design,  
11 development, and delivery of projects, in-  
12 cluding practices that promote perform-  
13 ance-based decision making to achieve na-  
14 tional, State, or regional objectives;

15 “(v) promotes cross-jurisdictional in-  
16 frastructure planning and coinvestment  
17 among a broad range of participants, in-  
18 cluding States, tribal governments, munici-  
19 palities, and public and private investors;  
20 and

21 “(vi) integrates transportation infra-  
22 structure investment planning, such as re-  
23 gional transportation plans, with land-use  
24 economic development and other infra-  
25 structure Investment Plans.

1 “(3) INVESTMENT PROSPECTUS.—

2 “(A) PUBLICATION.—Not later than 1  
3 year after the date of the enactment of the  
4 American Infrastructure Investment Fund Act  
5 of 2011, the Fund shall publish a detailed de-  
6 scription of its strategy in an Investment Pro-  
7 spectus that—

8 “(i) specifies what will be considered  
9 significant to the economic competitiveness  
10 of all or part of the United States in a  
11 manner consistent with the primary objec-  
12 tive set forth in subsection (b)(1);

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

15 “(I) reaching the objectives set  
16 forth in subsection (b); and

17 “(II) carrying out the Fund  
18 strategy described in this subsection;

19 “(iii) describes in detail—

20 “(I) the framework and method-  
21 ology for calculating the qualification  
22 score assigned under section  
23 364(f)(3);

24 “(II) the data to be requested  
25 from applicants; and

1                   “(III) the formula to be applied  
2                   to such data to calculate the qualifica-  
3                   tion score;

4                   “(iv) describes how selection criteria  
5                   will be applied by the Fund to determine  
6                   the competitiveness of an application and  
7                   its qualification score relative to other cur-  
8                   rent applications and previously funded ap-  
9                   plications; and

10                  “(v) describes how the qualification  
11                  score methodology and project selection  
12                  framework are consistent with maximizing  
13                  the Fund’s goals in urban and rural areas.

14                  “(B) UPDATES.—Not later than 2 years  
15                  after the original publication of the Investment  
16                  Prospectus, and biennially thereafter, the Fund  
17                  shall publish an updated Investment Pro-  
18                  spectus.

19                  “(C) APPROVAL.—The Fund may not pub-  
20                  lish the Investment Prospectus or any subse-  
21                  quent updates under subparagraph (B) until  
22                  the Board has approved the Investment Pro-  
23                  spectus by a majority vote.

24                  “(4) OPERATING GUIDANCE.—

1           “(A) PUBLICATION.—Not later than 1  
2 year after the date of the enactment of the  
3 American Infrastructure Investment Fund Act  
4 of 2011, the Fund shall establish and publish  
5 its Operating Guidance for the management of  
6 the Fund, which shall—

7           “(i) establish general operating proce-  
8 dures to be followed by the Fund in car-  
9 rying out its authorities under this sub-  
10 chapter;

11           “(ii) establish criteria, requirements,  
12 and standards regarding the provisions of  
13 various forms of assistance authorized  
14 under this subchapter, including the var-  
15 ious forms and terms of credit assistance  
16 that are consistent with the requirements  
17 under this subchapter;

18           “(iii) establish an application and  
19 award process for Planning and Feasibility  
20 Loans in accordance with the provisions  
21 under this subchapter;

22           “(iv) establish disclosure and applica-  
23 tion procedures for nominating or other-  
24 wise proposing applications for project as-  
25 sistance, either solicited or unsolicited, that

1 are consistent with the requirements under  
2 this subchapter;

3 “(v) describe in detail the form and  
4 timing of data and other information re-  
5 quired of applicants in conjunction with  
6 consideration of an application for finan-  
7 cial assistance under this subchapter; and

8 “(vi) establish a schedule of regular  
9 time intervals for the submission for con-  
10 sideration of sets of 1 or more Investment  
11 Plans to the Board.

12 “(B) REVIEW AND UPDATE.—The Fund  
13 shall periodically review, and may update, the  
14 Operating Guidance published under subpara-  
15 graph (A).

16 “(5) RULEMAKING.—Paragraphs (3) and (4)  
17 shall be carried out in accordance with the rule-  
18 making procedures set forth in section 553 of title  
19 5, United States Code.

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

21 “(a) EXECUTIVE DIRECTOR.—

22 “(1) APPOINTMENT; AUTHORITY.—The Presi-  
23 dent shall appoint, by and with the advice and con-  
24 sent of the Senate, an Executive Director, who shall  
25 be the chief executive officer of the Fund, and shall

1 have such executive functions, powers, and duties as  
2 set forth in this subchapter or prescribed by the  
3 Board.

4 “(2) SUPERVISION.—The Executive Director  
5 shall be subject to the supervision and direction of  
6 the Secretary of Transportation, consistent with the  
7 Executive Director’s duties under this subchapter  
8 and other requirements set forth in the Operating  
9 Guidance referred to in section 362(c)(4).

10 “(3) QUALIFICATIONS.—The Executive Director  
11 shall have demonstrated expertise in at least 2 of the  
12 following 3 areas:

13 “(A) Economic analysis.

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

15 “(C) Organizational management.

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

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

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

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

5           “(C) hire and supervise a staff of qualified  
6 transportation infrastructure planning profes-  
7 sionals that will—

8                 “(i) establish and maintain a project  
9 application origination capability at the  
10 Fund;

11                “(ii) conduct a nationwide search for  
12 projects that promote the strategy set  
13 forth in the most recently published Invest-  
14 ment Prospectus; and

15                “(iii) solicit applications from eligible  
16 funding recipients to finance projects de-  
17 scribed in clause (ii);

18           “(D) hire and supervise a staff of qualified  
19 economics professionals that will—

20                 “(i) establish and maintain an anal-  
21 ysis capability at the Fund;

22                 “(ii) collect and analyze application  
23 data; and



1           “(iii) report to the Executive Director  
 2           on qualification scores, measures of uncer-  
 3           tainty, and other analyses of applications;  
 4           “(E) hire and supervise a staff of qualified  
 5           project finance professionals that will—

6           “(i) establish and maintain an invest-  
 7           ment planning process capability at the  
 8           Fund;

9           “(ii) review qualified applications; and

10           “(iii) structure Investment Plans; and

11           “(F) hire and supervise a staff of qualified  
 12           project management professionals that will—

13           “(i) establish and maintain a technical  
 14           assistance capability at the Fund;

15           “(ii) assist those entities receiving  
 16           funding from the Fund in the successful  
 17           execution of their Investment Plans; and

18           “(iii) otherwise implement the funding  
 19           decisions of the Secretary.

20           “(b) BOARD OF DIRECTORS.—

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

24           “(2) MEMBERSHIP.—The Board shall be com-  
 25           posed of 7 members, including—

1           “(A) the Secretary of the Treasury, the  
2 Secretary of Commerce, and the Secretary of  
3 Energy, who shall serve as permanent members;  
4 and

5           “(B) 4 executives of the Department of  
6 Transportation appointed by the Secretary, of  
7 whom—

8                   “(i) not more than 2 shall serve con-  
9 currently as—

10                           “(I) the Deputy Secretary;

11                           “(II) the Under Secretary of  
12 Transportation for Policy;

13                           “(III) the General Counsel;

14                           “(IV) the Chief Financial Officer;

15                           “(V) the Assistant Secretary of  
16 Transportation for Policy; or

17                           “(VI) the Assistant Secretary of  
18 Transportation for Aviation and  
19 International Affairs; and

20                   “(ii) not more than 2 shall serve for  
21 not longer than 2 years, while concurrently  
22 serving as—

23                           “(I) the Administrator of the  
24 Federal Aviation Administration;

1                   “(II) the Administrator of the  
2                   Federal Highway Administration;

3                   “(III) the Administrator of the  
4                   Federal Railroad Administration;

5                   “(IV) the Administrator of the  
6                   Federal Transit Administration;

7                   “(V) the Administrator of the  
8                   Maritime Administration;

9                   “(VI) the Administrator of the  
10                  Pipeline and Hazardous Materials  
11                  Safety Administration; or

12                  “(VII) the Administrator of the  
13                  Federal Motor Carrier Safety Admin-  
14                  istration.

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

16                         “(A) not later than 180 days after the date  
17                         of the enactment of the American Infrastruc-  
18                         ture Investment Fund Act of 2011, establish  
19                         and approve the Investment Prospectus, in con-  
20                         sultation with the Fund Advisory Committee;

21                         “(B) on each biennial anniversary of its  
22                         original publication, update the Investment Pro-  
23                         spectus, in consultation with the Fund Advisory  
24                         Committee;

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

4           “(D) determine by majority vote whether  
5           or not to recommend Investment Plans sub-  
6           mitted by the Executive Director to the Sec-  
7           retary; and

8           “(E) certify reports to Congress and other  
9           publications of the Fund.

10          “(4) MAJORITY VOTE REQUIRED.—Each action  
11          or decision by the Board shall be by majority vote  
12          of all members, whether in person or in absentia.  
13          Each member shall be provided a reasonable oppor-  
14          tunity to vote on all matters before the Board.

15          “(c) FUND ADVISORY COMMITTEE.—

16          “(1) ESTABLISHMENT.—Not later than 180  
17          days after the date of the enactment of the Amer-  
18          ican Infrastructure Investment Fund Act of 2011,  
19          the President shall establish an advisory committee,  
20          to be known as the ‘Fund Advisory Committee’.

21          “(2) MEMBERSHIP.—

22          “(A) APPOINTMENT.—The President shall  
23          appoint not fewer than 5 people and not more  
24          than 7 people to serve 3-year terms as members

1 of the Fund Advisory Committee, including 1  
2 member to serve as Chair of the Committee.

3 “(B) QUALIFICATIONS.—Each member  
4 shall have expertise in—

5 “(i) economics and economic analysis;

6 “(ii) project or fund management;

7 “(iii) portfolio or fund management;

8 “(iv) organized labor interests;

9 “(v) environmental interests;

10 “(vi) American business and trade in-  
11 terests;

12 “(vii) rural community and economic  
13 development;

14 “(viii) metropolitan economic develop-  
15 ment and clustering of economic develop-  
16 ment;

17 “(ix) State Department of Transpor-  
18 tation or Metropolitan Planning Organiza-  
19 tion policies and priorities; or

20 “(x) other infrastructure planning, re-  
21 development, and development-related  
22 codes and policies.

23 “(C) REPRESENTATION.—The President  
24 shall ensure that the membership of the Fund  
25 Advisory Committee—

1 “(i) is bipartisan;

2 “(ii) is geographically and economi-  
3 cally balanced; and

4 “(iii) is balanced in terms of the func-  
5 tions to be performed by the Fund Advi-  
6 sory Committee.

7 “(3) ADVICE.—The Fund Advisory Committee  
8 shall advise the Board and the Secretary with re-  
9 spect to—

10 “(A) the alignment of the Investment Pro-  
11 spectus with the primary and secondary objec-  
12 tives, and other elements of the Fund strategy  
13 described in section 362(e);

14 “(B) the alignment of the framework and  
15 methodology used to determine qualification  
16 scores and uncertainty estimates with the pri-  
17 mary objective, secondary objectives, and the  
18 Fund strategy;

19 “(C) the consistency of the calculation of  
20 qualification scores and uncertainty estimates  
21 with academic standards for analytical rigor  
22 and data quality typically applied to peer-re-  
23 viewed research;

24 “(D) the alignment of investment decision  
25 mechanics and outcomes with the Investment

1 Prospectus and the requirements under this  
2 subchapter;

3 “(E) the integrity and effectiveness of  
4 Fund operations and performance, including  
5 application evaluation processes, Investment  
6 Plan processes and determinations, and the op-  
7 timization of the Fund’s performance as a port-  
8 folio; and

9 “(F) prospects for the extension of the  
10 Fund’s activities to nontransportation infra-  
11 structure sectors likely to benefit the United  
12 States, including renewable energy generation,  
13 energy transmission and storage, energy effi-  
14 ciency, drinking water and wastewater systems,  
15 and telecommunications.

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

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

20 “(a) AGREEMENTS WITH OTHER ORGANIZATIONS.—  
21 The Fund may—

22 “(1) enter into an agreement with any organi-  
23 zation within the Department of Transportation to  
24 obtain necessary technical expertise and assistance;  
25 and

1           “(2) may request any Federal agency to detail  
2 employees to the Fund for purposes of carrying out  
3 its duties under this subchapter.

4           “(b) FEES FOR SERVICES.—

5           “(1) ADMINISTRATIVE FEES.—The Fund may  
6 establish and collect fees from eligible funding recipi-  
7 ents, including application and processing fees and  
8 other fees associated with the costs of loan servicing,  
9 at a level sufficient to cover all or a portion of the  
10 administrative costs to the Federal Government of  
11 providing funding assistance and servicing the credit  
12 instruments entered into under this subchapter.

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

20           “(3) LIMITATION.—The Fund may not collect  
21 fees under paragraph (1) or (2) that originate as a  
22 loan or a debt obligation guaranteed by the Federal  
23 Government.

24           “(4) AVAILABILITY OF AMOUNTS.—Amounts  
25 collected under paragraphs (1) and (2) shall be



1 available to be expended to carry out the duties  
2 under this subchapter.

3 “(c) PLANNING AND FEASIBILITY LOANS.—

4 “(1) IN GENERAL.—The Fund may provide  
5 loans, which may be forgivable, to eligible funding  
6 recipients to fund activities related to the planning,  
7 preparation, or design of an eligible project proposal,  
8 including costs associated with—

9 “(A) planning and formulating optimal  
10 project design;

11 “(B) assessing project technical feasibility;  
12 and

13 “(C) assessing potential project perform-  
14 ance.

15 “(2) LOAN PROGRAM CRITERIA.—In providing  
16 loans under this subsection, the Fund shall give pri-  
17 ority to activities that are likely to lead to projects  
18 that—

19 “(A) advance the objectives set forth in  
20 section 362(b); and

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

23 “(3) FEDERAL SHARE.—The Fund may enter  
24 into a loan agreement with an eligible recipient in  
25 which the Fund agrees to pay up to 100 percent of

1 eligible planning and feasibility costs of an eligible  
2 project under this subsection.

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

5 “(A) any activity reasonably necessary to  
6 obtain Federal, State, and local permits, li-  
7 censes, and approvals for an eligible project, in-  
8 cluding—

9 “(i) concept development and prelimi-  
10 nary design;

11 “(ii) economic and environmental  
12 analyses; and

13 “(iii) application, licensing, and per-  
14 mit fees.

15 “(B) the preparation of financial analyses  
16 and other economic analyses that are reason-  
17 ably necessary to secure funding to implement  
18 an eligible project.

19 “(5) ALIGNMENT WITH INVESTMENT PRO-  
20 SPECTUS.—The Fund may not provide a loan for a  
21 project under this subsection unless the application  
22 materials demonstrate that the eligible project is  
23 aligned with the strategy outlined in the Investment  
24 Prospectus.

1           “(6) DESIGNATION FOR RECEIPT OF CERTAIN  
2 FUNDS.—If a non-Federal governmental entity,  
3 agency, or instrumentality is carrying out the plan-  
4 ning and feasibility activities, the eligible funding re-  
5 cipient may designate such entity, agency, or instru-  
6 mentality to receive loan amounts for such activities  
7 directly from the Fund.

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

9               “(1) DIRECT LOANS.—

10                   “(A) AGREEMENTS.—The Fund is author-  
11 ized to make direct loans to eligible funding re-  
12 cipients for eligible projects on such terms and  
13 conditions, and containing such covenants, rep-  
14 resentations, warranties, and requirements, in-  
15 cluding required audits, as the Fund determines  
16 appropriate, in accordance with the provisions  
17 under this subchapter, the Operating Guidance,  
18 and all other statutory and regulatory require-  
19 ments.

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

22                           “(i) may only be used to fund eligible  
23 project costs covered in an Investment  
24 Plan approved by the Secretary; 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.—Direct loans made under this para-  
5                   graph will be on such terms, conditions, and  
6                   limitations as the Executive Director may pre-  
7                   scribe, except that—

8                   “(i) the Fund may not provide credit  
9                   assistance to any prospective borrower un-  
10                  less such assistance—

11                  “(I) is necessary to alleviate a  
12                  credit market imperfection; or

13                  “(II) is necessary to achieve  
14                  specified Federal objectives by pro-  
15                  viding credit assistance; and

16                  “(III) is the most efficient way to  
17                  meet such objectives on a borrower-  
18                  by-borrower basis;

19                  “(ii) loans made under this paragraph  
20                  may not be subordinated (unless such sub-  
21                  ordination is necessary to achieve Federal  
22                  objectives, consistent with the criteria and  
23                  policies set forth in the Operating Guid-  
24                  ance) to—

1                   “(I) another debt contracted by  
2                   the borrower; or

3                   “(II) any other claims against  
4                   the borrower in the case of default;

5                   “(iii) direct loans or interest supple-  
6                   ments on loan guarantees shall be at an in-  
7                   terest rate that is set by reference to a  
8                   benchmark interest rate (yield) on market-  
9                   able Treasury securities with a similar ma-  
10                  turity to the direct loans being made or the  
11                  non-Federal loans being guaranteed, and  
12                  includes any necessary credit risk premium  
13                  at a level consistent with the interest rate  
14                  policy set forth in the Operating Guidance;

15                  “(iv) the Executive Director—

16                         “(I) shall prescribe explicit  
17                         standards for use in periodically as-  
18                         sessing the credit risk of new and ex-  
19                         isting direct loans and guaranteed  
20                         loans; and

21                         “(II) may not extend credit as-  
22                         sistance without determining that  
23                         there is a reasonable assurance of re-  
24                         payment;

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

8           “(vi) the total principal amount of the  
9           direct loan or loan guarantee may not ex-  
10          ceed—

11                   “(I) the lower of 70 percent of  
12                   total eligible project cost less the per-  
13                   centage of eligible project costs that  
14                   are otherwise funded by the Fund; or

15                   “(II) another level prescribed in  
16                   the Operating Guidance; and

17           “(vii) notwithstanding any other pro-  
18           vision of law relating to the acquisition,  
19           handling, or disposal of property by the  
20           Federal Government, the Fund may com-  
21           plete, recondition, reconstruct, renovate,  
22           repair, maintain, operate, or sell any prop-  
23           erty acquired by the Fund under this sub-  
24           chapter.

25          “(D) REPAYMENT.—

1 “(i) POLICIES.—The Fund shall—

2 “(I) adhere to the policies set  
3 forth in the Operating Guidance con-  
4 cerning repayment terms; and

5 “(II) establish repayment terms  
6 for each direct loan based on the pro-  
7 jected cash flow from project revenues  
8 or other repayment sources.

9 “(ii) MATURITY DATE.—The final ma-  
10 turity date of a direct loan under this  
11 paragraph—

12 “(I) shall not exceed 90 percent  
13 of the estimated useful economic life  
14 of the asset being financed, except  
15 under conditions set forth in the Op-  
16 erating Guidance; and

17 “(II) may not be later than the  
18 estimated useful economic life of the  
19 asset being financed.

20 “(E) RISK ASSESSMENT.—Before entering  
21 in any agreement under this section, the Execu-  
22 tive Director shall complete a risk assessment  
23 of the project to be funded. Requirements for  
24 risk assessment shall be outlined in the Oper-  
25 ating Guidance.

1           “(2) LOAN GUARANTEES.—

2                   “(A) IN GENERAL.—The Fund is author-  
3 ized to provide loan guarantees to eligible fund-  
4 ing recipients on such terms and conditions and  
5 containing such covenants, representations,  
6 warranties, and requirements (including re-  
7 quired audits) as the Fund determines appro-  
8 priate, in accordance with the provisions under  
9 this subchapter, the Operating Guidance, and  
10 all other statutory and regulatory requirements.

11                   “(B) APPROVED INVESTMENT PLAN.—  
12 Loan guarantees provided under this para-  
13 graph—

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

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

18                   “(C) TERMS, CONDITIONS, AND LIMITA-  
19 TIONS.—

20                           “(i) IN GENERAL.—The terms, condi-  
21 tions, and limitations of a guaranteed loan  
22 shall comply with the terms, conditions,  
23 and limitations set forth in paragraph (1)  
24 for a direct loan, including maximum Fund  
25 share requirements, except that the inter-



1 est rate on the guaranteed loan and any  
2 repayment features shall be negotiated be-  
3 tween the eligible funding recipient and the  
4 lender in accordance with the policies set  
5 forth in the Operating Guidance, and with  
6 the consent of the Secretary.

7 “(ii) INCOME EXCLUDED.—A loan  
8 may not be guaranteed under this para-  
9 graph if—

10 “(I) the income from such loan is  
11 excluded from gross income for the  
12 purposes of chapter 1 of the Internal  
13 Revenue Code of 1986; or

14 “(II) the guarantee provides sig-  
15 nificant collateral or security, as de-  
16 termined by the Executive Director,  
17 for other obligations generating in-  
18 come that is similarly excluded.

19 “(iii) FEES.—Fees or premiums for a  
20 loan guarantee or insurance coverage shall  
21 be set at levels that minimize the cost to  
22 the Government (as defined in section  
23 502(5) of the Federal Credit Reform Act  
24 of 1990 (6 U.S.C. 661a(5))) of such cov-  
25 erage, while supporting achievement of the

1 program's objectives, in accordance with  
2 policies set forth in the Operating Guid-  
3 ance.

4 “(iv) PERCENT GUARANTEED.—A  
5 loan guarantee under this paragraph may  
6 not exceed 80 percent of the loss of the  
7 loan. Borrowers who pose less of a risk  
8 shall receive a lower guarantee as a per-  
9 centage of the loan amount.

10 “(v) CRITERIA.—A loan may not be  
11 guaranteed under this paragraph unless  
12 the Executive Director determines that—

13 “(I) the lender is responsible;

14 and

15 “(II) adequate provision is made  
16 for servicing the loan on reasonable  
17 terms.

18 “(vi) CONCLUSIVE EVIDENCE.—Any  
19 guarantee shall be conclusive evidence  
20 that—

21 “(I) such guarantee has been  
22 properly obtained;

23 “(II) the underlying loan quali-  
24 fied for such guarantee; and

1                   “(III) such guarantee is pre-  
2                   sumed to be valid, legal, and enforce-  
3                   able, unless such guarantee was ob-  
4                   tained through fraud or material mis-  
5                   representation by the holder.

6                   “(vii) EFFECT OF DEFAULT.—If, as a  
7                   result of a default by a borrower under a  
8                   guaranteed loan, after the holder of the  
9                   loan has made such further collection ef-  
10                  forts and instituted such enforcement pro-  
11                  ceedings as the Executive Director may re-  
12                  quire, the Executive Director determines  
13                  that the holder has suffered a loss, the Ex-  
14                  ecutive Director—

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

18                         “(II) upon making such payment,  
19                         shall be subrogated to all the rights of  
20                         the recipient of the payment; and

21                         “(III) shall be entitled to recover  
22                         from the borrower the amount of any  
23                         payments made pursuant to any guar-  
24                         antee entered into under this para-  
25                         graph.

1                   “(viii) ENFORCEMENT.—The Attorney  
2                   General shall take such action as may be  
3                   appropriate to enforce any right accruing  
4                   to the United States as a result of the  
5                   issuance of any loan guarantee under this  
6                   paragraph.

7                   “(ix) SAVINGS PROVISION.—Nothing  
8                   in this paragraph may be construed to pre-  
9                   clude any forbearance for the benefit of the  
10                  borrower, which may be agreed upon by  
11                  the Executive Director, if budget authority  
12                  for any resulting modification cost (as de-  
13                  fined under section 502 of the Congres-  
14                  sional Budget Act (6 U.S.C. 661a)) is  
15                  available.

16                  “(D) REPAYMENT.—The Fund shall ad-  
17                  here to policies set forth in the Operating Guid-  
18                  ance concerning repayment terms and shall es-  
19                  tablish repayment terms for each direct loan  
20                  based on the projected cash flow from project  
21                  revenues or other repayment sources.

22                  “(E) RISK ASSESSMENT.—Requirements  
23                  for risk assessment shall be outlined in the Op-  
24                  erating Guidance.

1       “(e) APPLICATION EVALUATION AND QUALIFICA-  
2 TION.—

3           “(1) APPLICATION ELIGIBILITY STANDARD.—

4       An application for financial assistance from the  
5       Fund may not be considered unless—

6           “(A) funding recipient or recipients,  
7           project or program of related projects, and as-  
8           sociated project costs identified in the applica-  
9           tion are eligible for such funding under this  
10          subchapter;

11          “(B) eligible project costs identified in the  
12          application—

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

14           “(ii) if the application is for a project  
15           or program of related projects located en-  
16           tirely in a rural area, are greater than  
17           \$10,000,000;

18          “(C) the application identifies financial as-  
19          sistance from sources outside of the Fund equal  
20          to at least 30 percent of the total eligible  
21          project costs;

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

1           “(E) the applicant is not ineligible to re-  
2           ceive Federal loans, loan guarantees, or insur-  
3           ance due to a delinquency on Federal tax or  
4           non-tax debts, including judgment liens against  
5           property for a debt to the Federal Government.

6           “(2) RESOLUTION OF DEBTS.—The Fund shall  
7           use credit bureaus as a screening tool and ask appli-  
8           cants about delinquencies described in paragraph  
9           (1)(E) on the application form. An application from  
10          an applicant that is delinquent on a debt to the Fed-  
11          eral Government may not be processed until after  
12          the applicant satisfactorily resolves the debts in com-  
13          pliance with section 3720B of title 31, United States  
14          Code, and section 285.13 of title 31, Code of Fed-  
15          eral Regulations.

16          “(3) QUALIFICATION SCORE.—

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

20                         “(i) based upon an evaluation of the  
21                         information and data collected from the  
22                         applicant;

23                         “(ii) referred to as the ‘qualification  
24                         score’; and

1           “(iii) equal to the ratio between the  
2           present value of benefits to the present  
3           value of costs reasonably expected to result  
4           from the funding of the project or projects  
5           proposed in the application.

6           “(B) CALCULATION.—The calculation of  
7           the qualification score shall be determined  
8           through a consistently and transparently ap-  
9           plied analytic and systematic framework. In  
10          order to indicate the potential uncertainty of  
11          the qualification score, the Fund shall use a  
12          measure of the uncertainty of expected project  
13          benefits and costs to derive a range of ratio val-  
14          ues with the qualification score as the midpoint  
15          of that range.

16          “(C) METHODOLOGY.—The methodology  
17          used to calculate the qualification score and un-  
18          certainty measures shall—

19                 “(i) apply equal weighting to all meas-  
20                 ures of the net present value of benefits  
21                 and costs;

22                 “(ii) include standardized measures of  
23                 the expected uncertainty in both total and  
24                 specific benefits and costs associated with  
25                 the project; and

1           “(iii) include a descriptive statement  
2           delineating the significant factors and  
3           analysis that went into determination of  
4           the score and the range.

5           “(D) PUBLICATION.—

6           “(i) INVESTMENT PROSPECTUS.—The  
7           methodology of the framework for calcu-  
8           lating the qualification score, including the  
9           specific mechanics of its calculation, shall  
10          be published in the Investment Prospectus.

11          “(ii) METHODOLOGY.—The quan-  
12          tification score, the methodology used to  
13          calculate the qualification score, the cal-  
14          culation of the qualification score, and the  
15          measure of uncertainty shall be—

16                  “(I) provided to the applicant not  
17                  later than 15 days after their final de-  
18                  termination; and

19                  “(II) published on the Fund’s  
20                  website not later than 30 days after  
21                  their final determination.

22          “(4) APPLICATION CERTIFICATION.—The Exec-  
23          utive Director may not certify an application as  
24          qualified for financial assistance on the basis of an  
25          evaluation of the information and data collected



1 from the applicant unless the Executive Director de-  
2 termines that the application’s qualification score—

3 “(A) has been calculated on the basis of  
4 data, estimates, and assumptions that are de-  
5 fensible according to accepted standards of eco-  
6 nomic analysis;

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

9 “(C) is greater than the threshold for qual-  
10 ification published in the Investment Pro-  
11 spectus; and

12 “(D) is competitive with scores issued to  
13 applications currently under consideration and  
14 scores issued to applications previously funded  
15 under this section, after taking into account the  
16 extent to which the application under consider-  
17 ation, in order of priority—

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

20 “(ii) addresses a special infrastructure  
21 investment challenge due to cost, com-  
22 plexity, cross-jurisdictional scope, multi-  
23 modal features, or the use of innovative  
24 technologies;

1           “(iii) provides a cost-effective ap-  
2           proach to achieving the benefits described  
3           in the application relative to alternative ap-  
4           proaches to achieving comparable benefits,  
5           after taking into account the estimated un-  
6           certainty in measures of costs and benefits  
7           associated with the project;

8           “(iv) combines amounts received from  
9           the Fund with other revenue sources to le-  
10          verage substantial co-investment from non-  
11          Federal sources;

12          “(v) delivers revenue streams from  
13          public or private sources dedicated to pay  
14          debt service, meet ongoing operating ex-  
15          penses, or provide for needed maintenance  
16          and capital renewal over the life cycle of  
17          the funded asset; and

18          “(vi) encourages the use of innovative  
19          procurement, asset management, or financ-  
20          ing to optimize the all-in-life-cycle cost-ef-  
21          fectiveness of a project.

22          “(f) INVESTMENT PLANS.—

23                 “(1) QUALIFIED APPLICATION REQUIRE-  
24                 MENT.—After an application is certified by the Ex-  
25                 ecutive Director as qualified under subsection (e)(4),

1 the Executive Director and the applicant shall enter  
2 a process for producing a mutually agreeable Invest-  
3 ment Plan. Financial assistance may not be provided  
4 to an applicant under this section unless the appli-  
5 cant's Investment Plan has been recommended by  
6 the Board and approved by the Secretary.

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

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

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

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

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

21 “(A) consider the qualification score  
22 achieved by the application relative to other  
23 current applications and previously funded ap-  
24 plications;

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

4           “(C) consider—

5                 “(i) the amount of Fund budgetary  
6                 resources required to complete a financing  
7                 package;

8                 “(ii) the percentage of Federal re-  
9                 sources included in the Investment Plan in  
10                the form of grants;

11               “(iii) the level of certainty of the pro-  
12               posed net benefits, including the risks to  
13               the Federal taxpayer and the project spon-  
14               sor in the event of project cost overrun or  
15               failure; and

16               “(iv) the percentage of eligible project  
17               costs to be funded through non-Federal re-  
18               sources pledged by the applicant to com-  
19               plete a financing package.

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

22               “(A) the Fund shall have the sole discre-  
23               tion to determine the terms of assistance to be  
24               offered to applicants, subject to the provisions  
25               under this subchapter, the availability of fund-

1           ing, and any other statutory and regulatory re-  
2           quirements;

3           “(B) if the Fund and the applicant are  
4           able to reach mutually agreeable terms, the  
5           Fund shall record the determination on Fund  
6           assistance and the details of the complete fi-  
7           nancing package in an Investment Plan;

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

11          “(D) the Fund is not required or com-  
12          pelled to reach agreement on an Investment  
13          Plan.

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

18          “(6) CONFLICT OF INTEREST PROTECTIONS.—  
19          The Secretary of Transportation and the Fund shall  
20          jointly establish, in operating procedures and in the  
21          Operating Guidance, communications practices and  
22          compliance procedures that protect professional staff  
23          of the Fund who are responsible for negotiating In-  
24          vestment Plans from outside or otherwise inappro-  
25          priate influence, and conflicts of interest, including

1 necessary restrictions on communications between  
 2 staff of the Fund who are responsible for the invest-  
 3 ment planning process and individuals and organiza-  
 4 tions within and outside the Department of Trans-  
 5 portation, including—

6 “(A) the Board;

7 “(B) the Office of the Secretary;

8 “(C) the Secretary; and

9 “(D) others needed to safeguard the ability

10 of the Fund to fairly and independently formu-

11 late Investment Plans under this subsection.

12 “(g) FUNDING DECISIONS.—

13 “(1) INVESTMENT PLAN SUBMISSION REQUIRE-

14 MENT.—The Board may not consider recommending

15 an application for funding before receiving an In-

16 vestment Plan from the Executive Director.

17 “(2) APPLICATION FUNDING RECOMMENDA-

18 TION.—Not later than 15 days after receiving an In-

19 vestment Plan from the Executive Director, the

20 Board shall—

21 “(A) vote on whether to recommend fund-

22 ing for the Investment Plan;

23 “(B) notify the Secretary of the outcome

24 of such vote; and

1           “(C) if funding is recommended, forward  
2           the Investment Plan to the Secretary for ap-  
3           proval.

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

6           “(4) FUNDING CONSIDERATION.—

7           “(A) DETERMINATION.—After considering  
8           an Investment Plan recommended by the  
9           Board, the Secretary shall approve or reject the  
10          Investment Plan.

11          “(B) APPROVAL.—If the Investment Plan  
12          is approved by the Secretary, it shall be funded  
13          in accordance with the provisions of the Invest-  
14          ment Plan.

15          “(C) REJECTION.—If the Investment Plan  
16          is rejected by the Secretary, the Investment  
17          Plan—

18                 “(i) shall be returned to the Executive  
19                 Director with a detailed justification for  
20                 rejecting the Investment Plan, which shall  
21                 be forwarded to the applicant; and

22                 “(ii) may be reconsidered by the Fund  
23                 not earlier than 1 year after such date of  
24                 return.

1       “(h) PROJECT SPONSORSHIP; PUBLIC BENEFIT  
2 ANALYSIS; LEGAL COMPLIANCE.—

3               “(1) COMPLIANCE WITH APPLICABLE LAWS.—

4                       “(A) IN GENERAL.—Subject to subpara-  
5 graphs (B) and (C), the Fund shall determine  
6 which requirements under chapter 53 of this  
7 title or title 23 shall be applicable to projects  
8 receiving financial assistance under this sub-  
9 chapter that would otherwise be eligible for fi-  
10 nancial assistance under such chapter or title.

11                      “(B) LABOR STANDARDS.—Labor stand-  
12 ards under chapter 53 of this title and title 23  
13 shall be applicable to projects described in sub-  
14 paragraph (A), including—

15                               “(i) applicable employee protective ar-  
16 rangement under section 5333(b);

17                               “(ii) the requirement that all laborers  
18 and mechanics employed by contractors or  
19 subcontractors on construction work per-  
20 formed on the projects be paid wages at  
21 rates not less than those prevailing on  
22 similar construction in the locality, as de-  
23 termined by the Secretary of Labor under  
24 subchapter IV of chapter 31 of title 40,



1 United States Code (except for section  
2 3145).

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

6 “(i) the applicable planning and pro-  
7 gramming requirements under section 134  
8 and 135 of title 23; and

9 “(ii) all applicable environmental laws  
10 and requirements, including the National  
11 Environmental Policy Act of 1969 (42  
12 U.S.C. 4321 et seq.) and the National His-  
13 toric Preservation Act of 1966 (16 U.S.C.  
14 470 et seq.).

15 “(2) LEAD AGENCY.—

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

24 “(B) JOINT LEAD FEDERAL AGENCY.—  
25 Nothing in this paragraph precludes another

1 Federal agency from being a joint lead agency  
2 in accordance with the regulations adopted by  
3 the President's Council on Environmental Qual-  
4 ity.

5 “(C) JOINT LEAD STATE AGENCY.—A non-  
6 Federal government entity, agency, or instru-  
7 mentality receiving funds under this subchapter  
8 may—

9 “(i) serve as a joint lead agency with  
10 the Department of Transportation under  
11 the National Environmental Policy Act of  
12 1969 (42 U.S.C. 4321 et seq.); and

13 “(ii) at the discretion of the lead Fed-  
14 eral agency, prepare any environmental  
15 document required in support of the  
16 project if the lead Federal agency—

17 “(I) furnishes guidance in such  
18 preparation; and

19 “(II) independently evaluates, ap-  
20 proves, and adopts the State or local  
21 government's environmental docu-  
22 mentation before taking any action on  
23 the project.

24 “(D) NONGOVERNMENTAL FUNDING RE-  
25 CIPIENTS.—If a project is undertaken by a non-

1 governmental entity, the non-Federal govern-  
 2 ment entity, agency, or instrumentality cospon-  
 3 sor of the project shall—

4 “(i) serve as a joint lead agency with  
 5 the Department; and

6 “(ii) have the authority to prepare the  
 7 environmental documents described in sub-  
 8 paragraph (C)(ii).

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

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

16 **“§ 365. Studies and reports**

17 “(a) ANNUAL FINANCIAL AUDIT.—

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

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

24 “(A) submit the results of each audit  
 25 under paragraph (1) to the Committee on Com-

1           merce, Science, and Transportation of the Sen-  
2           ate and the Committee on Transportation and  
3           Infrastructure of the House of Representatives;  
4           and

5                   “(B) post such audit results on the Fund’s  
6           website.

7           “(b) ANNUAL PERFORMANCE EVALUATION.—

8                   “(1) IN GENERAL.—The Comptroller General  
9           shall conduct an annual assessment—

10                   “(A) to evaluate the Fund’s overall per-  
11           formance; and

12                   “(B) to determine the effectiveness of the  
13           Fund at meeting its objectives and strategy.

14                   “(2) DISSEMINATION.—The Comptroller Gen-  
15           eral shall submit a report containing the results of  
16           the evaluation conducted under paragraph (1) to the  
17           Committee on Commerce, Science, and Transpor-  
18           tation of the Senate and the Committee on Trans-  
19           portation and Infrastructure of the House of Rep-  
20           resentatives.

21           “(c) SEMIANNUAL REPORT.—The Executive Director  
22           shall post semiannual reports on the Fund’s website that  
23           describe the Fund’s activities, including—

24                   “(1) the status of applications received;

25                   “(2) the outcome of application evaluations;

1           “(3) the outcome of investment planning proc-  
2           esses;

3           “(4) the status of Investment Plans submitted  
4           to the Board; and

5           “(5) the status of financial assistance awards  
6           approved by the Secretary.

7           “(d) BIENNIAL REPORT.—

8           “(1) IN GENERAL.—Every 2 years after the  
9           date of the enactment of the American Infrastruc-  
10          ture Investment Fund Act of 2011, the Board, in  
11          consultation with the Director of the Office of Man-  
12          agement and Budget and the Fund Advisory Com-  
13          mittee, shall prepare a report that—

14                   “(A) evaluates the Fund’s performance;

15                   “(B) includes an assessment of the Fund  
16                   as a model for infrastructure investment; and

17                   “(C) may include a recommendation on  
18                   whether to extend the Fund’s activities to non-  
19                   transportation infrastructure sectors likely to  
20                   benefit the United States, including—

21                           “(i) renewable energy generation;

22                           “(ii) energy transmission and storage;

23                           “(iii) energy efficiency;

24                           “(iv) drinking water and wastewater  
25                   systems;

1 “(v) telecommunications; and

2 “(vi) other infrastructure activities.

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

4 “(A) submit the report prepared under  
5 paragraph (1) to the Committee on Commerce,  
6 Science, and Transportation of the Senate and  
7 the Committee on Transportation and Infra-  
8 structure of the House of Representatives; and

9 “(B) post the report on the Fund’s  
10 website.

11 “(e) INVESTMENT PLAN AND DECISIONS.—Not later  
12 than 90 days after the Board’s decision on an Investment  
13 Plan, the Fund Advisory Committee shall post a report  
14 on the Fund’s website that assesses—

15 “(1) the adherence of each funding decision to  
16 the requirements of the Investment Prospectus, Op-  
17 erating Guidance, and this subchapter;

18 “(2) the consistency of funded applications with  
19 the primary objective, the secondary objectives, the  
20 Fund strategy, and the requirements under this sub-  
21 chapter;

22 “(3) the validity of the qualification certifi-  
23 cation of each funded application;

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

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

3           (b) AUTHORIZATION OF APPROPRIATIONS.—

4           (1) AMOUNTS AUTHORIZED.—

5           (A) IN GENERAL.—There are authorized to  
6           be appropriated to carry out subchapter IV of  
7           chapter 3 of title 49, United States Code, as  
8           added by subsection (a), \$5,000,000,000 for  
9           each of the fiscal years 2012 and 2013.

10          (B) AVAILABILITY OF FUNDS.—Amounts  
11          made available under subparagraph (A) shall  
12          remain available until expended.

13          (2) ADMINISTRATIVE EXPENSES.—Of the  
14          amounts appropriated pursuant to paragraph (1),  
15          the Fund may expend, to pay the reasonable costs  
16          of administering such subchapter IV, inclusive of  
17          any fees collected pursuant to such subchapter—

18                 (A) not more than \$50,000,000 in fiscal  
19                 year 2012; and

20                 (B) not more than \$51,000,000 in fiscal  
21                 year 2013.

1 **SEC. 3. NATIONAL INFRASTRUCTURE INVESTMENT**  
 2 **GRANTS.**

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

6 **“Subchapter III—Financial Assistance**

7 **“SEC. 5581. NATIONAL INFRASTRUCTURE INVESTMENT**  
 8 **GRANTS.**

9 “(a) ESTABLISHMENT OF PROGRAM.—The Secretary  
 10 of Transportation shall establish a competitive grant pro-  
 11 gram to provide financial assistance for projects that will  
 12 have a significant impact on the Nation, a metropolitan  
 13 area, or a region.

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

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

19 “(2) a highway;

20 “(3) a bridge;

21 “(4) an airport;

22 “(5) an air traffic control system;

23 “(6) a port or marine facility;

24 “(7) an inland waterway;

25 “(8) a transmission or distribution pipeline;

26 “(9) public transportation facilities or systems;



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

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

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

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

10           “(1) leverages Federal investment by encour-  
11 aging non-Federal contributions to the project, in-  
12 cluding contributions from public-private partner-  
13 ships;

14           “(2) improves the mobility of people, goods, and  
15 commodities;

16           “(3) incorporates new and innovative tech-  
17 nologies, including intelligent transportation sys-  
18 tems;

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

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

23           “(6) reduces congestion;

1           “(7) improves the condition of transportation  
2 infrastructure, including bringing it into a state of  
3 good repair;

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

6           “(9) demonstrates that the proposed project  
7 cannot be readily and efficiently realized without  
8 Federal support and participation; and

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

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

14          “(e) LETTERS OF INTENT.—

15           “(1) IN GENERAL.—The Secretary may issue a  
16 letter of intent to an applicant announcing an inten-  
17 tion to obligate, for a major capital project under  
18 this subsection, an amount from future available  
19 budget authority specified in law that is not more  
20 than the amount stipulated as the financial partici-  
21 pation of the Secretary in the project.

22           “(2) NOTIFICATION.—Not later than 30 days  
23 before issuing a letter under paragraph (1), the Sec-  
24 retary shall submit written notification of the pro-  
25 posed letter or agreement to the Committee on Com-

1 merce, Science, and Transportation of the Senate  
2 and the Committee on Transportation and Infra-  
3 structure of the House of Representatives, which  
4 shall include—

5 “(A) a copy of the proposed letter or  
6 agreement;

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

9 “(C) a description of how the project meets  
10 such criteria.

11 “(3) COMMITMENT.—An obligation or adminis-  
12 trative commitment may be made only when  
13 amounts are made available. The letter of intent  
14 shall state that the contingent commitment is not an  
15 obligation of the Federal Government, and is subject  
16 to the availability of funds under Federal law and to  
17 Federal laws in force or enacted after the date of  
18 the contingent commitment.

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

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

23 “(2) ESTIMATE.—The Secretary shall estimate  
24 the net project cost based on engineering studies,

1 studies of economic feasibility, and information on  
2 the expected use of equipment or facilities.

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

8 “(g) COOPERATIVE AGREEMENTS.—

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

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

15 “(A) ownership or operation of any land,  
16 facility, vehicle, or other physical asset associ-  
17 ated with the project;

18 “(B) cost-sharing of any project expense or  
19 non-Federal share of the project cost, including  
20 in kind contributions;

21 “(C) carrying out administration, construc-  
22 tion management, project management, project  
23 operation, or any other management or oper-  
24 ational duty associated with the project; and

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

3           “(h) OVERSIGHT PROGRAM.—

4           “(1) ESTABLISHMENT.—

5           “(A) IN GENERAL.—The Secretary shall  
6           establish an oversight program to monitor the  
7           effective and efficient use of funds authorized to  
8           carry out this section.

9           “(B) MINIMUM REQUIREMENT.—At a min-  
10          imum, the program shall be responsive to all  
11          areas relating to financial integrity and project  
12          delivery.

13          “(2) FINANCIAL INTEGRITY.—

14          “(A) FINANCIAL MANAGEMENT SYS-  
15          TEMS.—The Secretary shall perform annual re-  
16          views that address elements of the applicant’s  
17          financial management systems that affect  
18          projects approved under subsection (a).

19          “(B) PROJECT COSTS.—The Secretary  
20          shall develop minimum standards for estimating  
21          project costs and shall periodically evaluate the  
22          practices of applicants for estimating project  
23          costs, awarding contracts, and reducing project  
24          costs.

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

7           “(4) RESPONSIBILITY OF THE APPLICANTS.—

8           “(A) IN GENERAL.—Each applicant shall  
9 submit to the Secretary for approval such  
10 plans, specifications, and estimates for each  
11 proposed project as the Secretary may require.

12           “(B) APPLICANT SUBRECIPIENTS.—The  
13 applicant shall be responsible for determining  
14 that a subrecipient of Federal funds under this  
15 section has—

16           “(i) adequate project delivery systems  
17 for projects approved under this section;  
18 and

19           “(ii) sufficient accounting controls to  
20 properly manage such Federal funds.

21           “(C) PERIODIC REVIEW.—The Secretary  
22 shall periodically review the monitoring of sub-  
23 recipients by the applicant.

24           “(5) SPECIFIC OVERSIGHT RESPONSIBIL-  
25 ITIES.—Nothing in this section shall affect or dis-

1 charge any oversight responsibility of the Secretary  
2 specifically provided for under this title or other  
3 Federal law.

4 “(i) MAJOR PROJECTS.—

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

11 “(A) a project management plan; and

12 “(B) an annual financial plan.

13 “(2) PROJECT MANAGEMENT PLAN.—A project  
14 management plan shall document—

15 “(A) the procedures and processes that are  
16 in effect to provide timely information to the  
17 project decision makers to effectively manage  
18 the scope, costs, schedules, quality of, and the  
19 Federal requirements applicable to, the project;  
20 and

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

23 “(3) FINANCIAL PLAN.—A financial plan  
24 shall—

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

3           “(B) provide for the annual submission of  
4           updates to the Secretary that are based on rea-  
5           sonable assumptions, as determined by the Sec-  
6           retary, of future increases in the cost to com-  
7           plete the project.

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

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

19          “(l) REGULATIONS.—Not later than 1 year after the  
20          date of the enactment of the American Infrastructure In-  
21          vestment Fund Act of 2011, the Secretary shall prescribe  
22          regulations to implement this section.

23          “(m) APPLICANT DEFINED.—In this subchapter, the  
24          term ‘applicant’ includes a State, a political subdivision



1 of a State, government-sponsored authorities and corpora-  
2 tions, and the District of Columbia.

3 “(n) SECRETARIAL OVERSIGHT.—

4 “(1) CONSTRUCTION MANAGEMENT CON-  
5 TRACTS.—The Secretary may use not more than 1  
6 percent of amounts made available in a fiscal year  
7 for capital projects under this subchapter to enter  
8 into contracts to oversee the construction of such  
9 projects.

10 “(2) COMPLIANCE REVIEWS.—The Secretary  
11 may use amounts available under paragraph (1) to  
12 make contracts for safety, procurement, manage-  
13 ment, and financial compliance reviews and audits of  
14 a recipient of amounts under paragraph (1).

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

18 “(o) PERFORMANCE EVALUATION.—

19 “(1) ANNUAL REPORT.—

20 “(A) IN GENERAL.—The Comptroller Gen-  
21 eral of the United States shall conduct an an-  
22 nual assessment to evaluate the overall per-  
23 formance of grants made under the program es-  
24 tablished pursuant to subsection (a).

1           “(B) DISSEMINATION.—The Comptroller  
2           General shall submit a report containing the re-  
3           sults of the evaluation conducted under sub-  
4           paragraph (A) to the Committee on Commerce,  
5           Science, and Transportation of the Senate and  
6           the Committee on Transportation and Infra-  
7           structure of the House of Representatives.

8           “(2) BIENNIAL REPORT.—Not later than 1  
9           year after the date of the enactment of the American  
10          Infrastructure Investment Fund Act of 2011, and  
11          every 6 months thereafter, the Secretary of Trans-  
12          portation shall submit a report to the congressional  
13          committees set forth in paragraph (1)(B) that docu-  
14          ments—

15                 “(A) the number of applications received  
16                 under this section;

17                 “(B) the status of such applications;

18                 “(C) the outcome of application evalua-  
19                 tions; and

20                 “(D) the status of grants awarded under  
21                 the program established pursuant to subsection  
22                 (a).

23          “(p) AUTHORIZATION OF APPROPRIATIONS.—There  
24          are authorized to be appropriated to the Secretary

1 \$600,000,000 for each of the fiscal years 2012 and 2013  
2 to carry out this section.”.

3 (b) CONFORMING AMENDMENT.—The table of con-  
4 tents 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”.

6 **SEC. 4. MULTI-MODAL TRANSPORTATION FUNDING.**

7 Section 133(b) of title 23, United States Code, is  
8 amended by adding at the end the following:

9 “(16) Passenger and freight transportation  
10 projects.

11 “(17) Port infrastructure projects.”.

○