

112TH CONGRESS }  
*2d Session*

HOUSE OF REPRESENTATIVES  
SENATE

{ REPORT  
112-557

MAP-21

CONFERENCE REPORT

TO ACCOMPANY

H.R. 4348



JUNE 28, 2012.—Ordered to be printed

(b) *EFFECT AND APPLICATION.*—Nothing in this subtitle or any amendment made by this subtitle—

(1) *supersedes or otherwise affects any other provision of Federal law, including, in particular, laws providing recovery for injury to natural resources under the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.) and laws for the protection of public health and the environment; or*

(2) *applies to any fine collected under section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321) for any incident other than the Deepwater Horizon oil spill.*

(c) *USE OF FUNDS.*—Funds made available under this subtitle may be used only for eligible activities specifically authorized by this subtitle and the amendments made by this subtitle.

**SEC. 1607. RESTORATION AND PROTECTION ACTIVITY LIMITATIONS.**

(a) *WILLING SELLER.*—Funds made available under this subtitle may only be used to acquire land or interests in land by purchase, exchange, or donation from a willing seller.

(b) *ACQUISITION OF FEDERAL LAND.*—None of the funds made available under this subtitle may be used to acquire land in fee title by the Federal Government unless—

(1) *the land is acquired by exchange or donation; or*

(2) *the acquisition is necessary for the restoration and protection of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region and has the concurrence of the Governor of the State in which the acquisition will take place.*

**SEC. 1608. INSPECTOR GENERAL.**

*The Office of the Inspector General of the Department of the Treasury shall have authority to conduct, supervise, and coordinate audits and investigations of projects, programs, and activities funded under this subtitle and the amendments made by this subtitle.*

## **TITLE II—AMERICA FAST FORWARD FINANCING INNOVATION**

**SEC. 2001. SHORT TITLE.**

*This title may be cited as the “America Fast Forward Financing Innovation Act of 2012”.*

**SEC. 2002. TRANSPORTATION INFRASTRUCTURE FINANCE AND INNOVATION ACT OF 1998 AMENDMENTS.**

*Sections 601 through 609 of title 23, United States Code, are amended to read as follows:*

**“§ 601. Generally applicable provisions**

*“(a) DEFINITIONS.—In this chapter, the following definitions apply:*

*“(1) CONTINGENT COMMITMENT.—The term ‘contingent commitment’ means a commitment to obligate an amount from future available budget authority that is—*

*“(A) contingent on those funds being made available in law at a future date; and*

*“(B) not an obligation of the Federal Government.*

“(2) *ELIGIBLE PROJECT COSTS.*—The term ‘eligible project costs’ means amounts substantially all of which are paid by, or for the account of, an obligor in connection with a project, including the cost of—

“(A) development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, permitting, preliminary engineering and design work, and other preconstruction activities;

“(B) construction, reconstruction, rehabilitation, replacement, and acquisition of real property (including land relating to the project and improvements to land), environmental mitigation, construction contingencies, and acquisition of equipment; and

“(C) capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction.

“(3) *FEDERAL CREDIT INSTRUMENT.*—The term ‘Federal credit instrument’ means a secured loan, loan guarantee, or line of credit authorized to be made available under this chapter with respect to a project.

“(4) *INVESTMENT-GRADE RATING.*—The term ‘investment-grade rating’ means a rating of BBB minus, Baa3, bbb minus, BBB (low), or higher assigned by a rating agency to project obligations.

“(5) *LENDER.*—The term ‘lender’ means any non-Federal qualified institutional buyer (as defined in section 230.144A(a) of title 17, Code of Federal Regulations (or any successor regulation), known as Rule 144A(a) of the Securities and Exchange Commission and issued under the Securities Act of 1933 (15 U.S.C. 77a et seq.)), including—

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

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

“(6) *LETTER OF INTEREST.*—The term ‘letter of interest’ means a letter submitted by a potential applicant prior to an application for credit assistance in a format prescribed by the Secretary on the website of the TIFIA program that—

“(A) describes the project and the location, purpose, and cost of the project;

“(B) outlines the proposed financial plan, including the requested credit assistance and the proposed obligor;

“(C) provides a status of environmental review; and

“(D) provides information regarding satisfaction of other eligibility requirements of the TIFIA program.

“(7) *LINE OF CREDIT.*—The term ‘line of credit’ means an agreement entered into by the Secretary with an obligor under section 604 to provide a direct loan at a future date upon the occurrence of certain events.

“(8) *LIMITED BUYDOWN.*—The term ‘limited buydown’ means, subject to the conditions described in section

603(b)(4)(C), a buydown of the interest rate by the obligor if the interest rate has increased between—

“(A)(i) the date on which a project application acceptable to the Secretary is submitted; or

“(ii) the date on which the Secretary entered into a master credit agreement; and

“(B) the date on which the Secretary executes the Federal credit instrument.

“(9) LOAN GUARANTEE.—The term ‘loan guarantee’ means any guarantee or other pledge by the Secretary to pay all or part of the principal of and interest on a loan or other debt obligation issued by an obligor and funded by a lender.

“(10) MASTER CREDIT AGREEMENT.—The term ‘master credit agreement’ means an agreement to extend credit assistance for a program of projects secured by a common security pledge (which shall receive an investment grade rating from a rating agency), or for a single project covered under section 602(b)(2) that would—

“(A) make contingent commitments of 1 or more secured loans or other Federal credit instruments at future dates, subject to the availability of future funds being made available to carry out this chapter;

“(B) establish the maximum amounts and general terms and conditions of the secured loans or other Federal credit instruments;

“(C) identify the 1 or more dedicated non-Federal revenue sources that will secure the repayment of the secured loans or secured Federal credit instruments;

“(D) provide for the obligation of funds for the secured loans or secured Federal credit instruments after all requirements have been met for the projects subject to the master credit agreement, including—

“(i) completion of an environmental impact statement or similar analysis required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

“(ii) compliance with such other requirements as are specified in section 602(c); and

“(iii) the availability of funds to carry out this chapter; and

“(E) require that contingent commitments result in a financial close and obligation of credit assistance not later than 3 years after the date of entry into the master credit agreement, or release of the commitment, unless otherwise extended by the Secretary.

“(11) OBLIGOR.—The term ‘obligor’ means a party that—

“(A) is primarily liable for payment of the principal of or interest on a Federal credit instrument; and

“(B) may be a corporation, partnership, joint venture, trust, or governmental entity, agency, or instrumentality.

“(12) PROJECT.—The term ‘project’ means—

“(A) any surface transportation project eligible for Federal assistance under this title or chapter 53 of title 49;

“(B) a project for an international bridge or tunnel for which an international entity authorized under Federal or State law is responsible;

“(C) a project for intercity passenger bus or rail facilities and vehicles, including facilities and vehicles owned by the National Railroad Passenger Corporation and components of magnetic levitation transportation systems; and

“(D) a project that—

“(i) is a project—

“(I) for a public freight rail facility or a private facility providing public benefit for highway users by way of direct freight interchange between highway and rail carriers;

“(II) for an intermodal freight transfer facility;

“(III) for a means of access to a facility described in subclause (I) or (II);

“(IV) for a service improvement for a facility described in subclause (I) or (II) (including a capital investment for an intelligent transportation system); or

“(V) that comprises a series of projects described in subclauses (I) through (IV) with the common objective of improving the flow of goods;

“(ii) may involve the combining of private and public sector funds, including investment of public funds in private sector facility improvements;

“(iii) if located within the boundaries of a port terminal, includes only such surface transportation infrastructure modifications as are necessary to facilitate direct intermodal interchange, transfer, and access into and out of the port; and

“(iv) is composed of related highway, surface transportation, transit, rail, or intermodal capital improvement projects eligible for assistance under this section in order to meet the eligible project cost threshold under section 602, by grouping related projects together for that purpose, subject to the condition that the credit assistance for the projects is secured by a common pledge.

“(13) **PROJECT OBLIGATION.**—The term ‘project obligation’ means any note, bond, debenture, or other debt obligation issued by an obligor in connection with the financing of a project, other than a Federal credit instrument.

“(14) **RATING AGENCY.**—The term ‘rating agency’ means a credit rating agency registered with the Securities and Exchange Commission as a nationally recognized statistical rating organization (as that term is defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))).

“(15) **RURAL INFRASTRUCTURE PROJECT.**—The term ‘rural infrastructure project’ means a surface transportation infrastructure project located in any area other than a city with a population of more than 250,000 inhabitants within the city limits.

“(16) **SECURED LOAN.**—The term ‘secured loan’ means a direct loan or other debt obligation issued by an obligor and

*funded by the Secretary in connection with the financing of a project under section 603.*

*“(17) STATE.—The term ‘State’ has the meaning given the term in section 101.*

*“(18) SUBSIDY AMOUNT.—The term ‘subsidy amount’ means the amount of budget authority sufficient to cover the estimated long-term cost to the Federal Government of a Federal credit instrument—*

*“(A) calculated on a net present value basis; and*

*“(B) excluding administrative costs and any incidental effects on governmental receipts or outlays in accordance with the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).*

*“(19) SUBSTANTIAL COMPLETION.—The term ‘substantial completion’ means—*

*“(A) the opening of a project to vehicular or passenger traffic; or*

*“(B) a comparable event, as determined by the Secretary and specified in the credit agreement.*

*“(20) TIFIA PROGRAM.—The term ‘TIFIA program’ means the transportation infrastructure finance and innovation program of the Department.*

*“(b) TREATMENT OF CHAPTER.—For purposes of this title, this chapter shall be treated as being part of chapter 1.*

**“§ 602. Determination of eligibility and project selection**

*“(a) ELIGIBILITY.—*

*“(1) IN GENERAL.—A project shall be eligible to receive credit assistance under this chapter if—*

*“(A) the entity proposing to carry out the project submits a letter of interest prior to submission of a formal application for the project; and*

*“(B) the project meets the criteria described in this subsection.*

*“(2) CREDITWORTHINESS.—*

*“(A) IN GENERAL.—To be eligible for assistance under this chapter, a project shall satisfy applicable creditworthiness standards, which, at a minimum, shall include—*

*“(i) a rate covenant, if applicable;*

*“(ii) adequate coverage requirements to ensure repayment;*

*“(iii) an investment grade rating from at least 2 rating agencies on debt senior to the Federal credit instrument; and*

*“(iv) a rating from at least 2 rating agencies on the Federal credit instrument, subject to the condition that, with respect to clause (iii), if the total amount of the senior debt and the Federal credit instrument is less than \$75,000,000, 1 rating agency opinion for each of the senior debt and Federal credit instrument shall be sufficient.*

*“(B) SENIOR DEBT.—Notwithstanding subparagraph (A), in a case in which the Federal credit instrument is the senior debt, the Federal credit instrument shall be required to receive an investment grade rating from at least 2 rating*



agencies, unless the credit instrument is for an amount less than \$75,000,000, in which case 1 rating agency opinion shall be sufficient.

“(3) *INCLUSION IN TRANSPORTATION PLANS AND PROGRAMS.*—A project shall satisfy the applicable planning and programming requirements of sections 134 and 135 at such time as an agreement to make available a Federal credit instrument is entered into under this chapter.

“(4) *APPLICATION.*—A State, local government, public authority, public-private partnership, or any other legal entity undertaking the project and authorized by the Secretary shall submit a project application that is acceptable to the Secretary.

“(5) *ELIGIBLE PROJECT COSTS.*—

“(A) *IN GENERAL.*—Except as provided in subparagraph (B), to be eligible for assistance under this chapter, a project shall have eligible project costs that are reasonably anticipated to equal or exceed the lesser of—

“(i)(I) \$50,000,000; or

“(II) in the case of a rural infrastructure project, \$25,000,000; and

“(ii) 33<sup>1</sup>/<sub>3</sub> percent of the amount of Federal highway assistance funds apportioned for the most recently completed fiscal year to the State in which the project is located.

“(B) *INTELLIGENT TRANSPORTATION SYSTEM PROJECTS.*—In the case of a project principally involving the installation of an intelligent transportation system, eligible project costs shall be reasonably anticipated to equal or exceed \$15,000,000.

“(6) *DEDICATED REVENUE SOURCES.*—The applicable Federal credit instrument shall be repayable, in whole or in part, from—

“(A) tolls;

“(B) user fees;

“(C) payments owing to the obligor under a public-private partnership; or

“(D) other dedicated revenue sources that also secure or fund the project obligations.

“(7) *PUBLIC SPONSORSHIP OF PRIVATE ENTITIES.*—In the case of a project that is undertaken by an entity that is not a State or local government or an agency or instrumentality of a State or local government, the project that the entity is undertaking shall be publicly sponsored as provided in paragraph (3).

“(8) *APPLICATIONS WHERE OBLIGOR WILL BE IDENTIFIED LATER.*—A State, local government, agency or instrumentality of a State or local government, or public authority may submit to the Secretary an application under paragraph (4), under which a private party to a public-private partnership will be—

“(A) the obligor; and

“(B) identified later through completion of a procurement and selection of the private party.

“(9) *BENEFICIAL EFFECTS.*—The Secretary shall determine that financial assistance for the project under this chapter will—

“(A) foster, if appropriate, partnerships that attract public and private investment for the project;

“(B) enable the project to proceed at an earlier date than the project would otherwise be able to proceed or reduce the lifecycle costs (including debt service costs) of the project; and

“(C) reduce the contribution of Federal grant assistance for the project.

“(10) *PROJECT READINESS.*—To be eligible for assistance under this chapter, the applicant shall demonstrate a reasonable expectation that the contracting process for construction of the project can commence by not later than 90 days after the date on which a Federal credit instrument is obligated for the project under this chapter.

“(b) *SELECTION AMONG ELIGIBLE PROJECTS.*—

“(1) *ESTABLISHMENT.*—The Secretary shall establish a rolling application process under which projects that are eligible to receive credit assistance under subsection (a) shall receive credit assistance on terms acceptable to the Secretary, if adequate funds are available to cover the subsidy costs associated with the Federal credit instrument.

“(2) *ADEQUATE FUNDING NOT AVAILABLE.*—If the Secretary fully obligates funding to eligible projects in a fiscal year, and adequate funding is not available to fund a credit instrument, a project sponsor of an eligible project may elect to enter into a master credit agreement and wait until the earlier of—

“(A) the following fiscal year; and

“(B) the fiscal year during which additional funds are available to receive credit assistance.

“(3) *PRELIMINARY RATING OPINION LETTER.*—The Secretary shall require each project applicant to provide a preliminary rating opinion letter from at least 1 rating agency—

“(A) indicating that the senior obligations of the project, which may be the Federal credit instrument, have the potential to achieve an investment-grade rating; and

“(B) including a preliminary rating opinion on the Federal credit instrument.

“(c) *FEDERAL REQUIREMENTS.*—

“(1) *IN GENERAL.*—In addition to the requirements of this title for highway projects, the requirements of chapter 53 of title 49 for transit projects, and the requirements of section 5333(a) of title 49 for rail projects, the following provisions of law shall apply to funds made available under this chapter and projects assisted with those funds:

“(A) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

“(B) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

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

“(2) *NEPA.*—No funding shall be obligated for a project that has not received an environmental categorical exclusion, a finding of no significant impact, or a record of decision under



*the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).*

*“(d) APPLICATION PROCESSING PROCEDURES.—*

*“(1) NOTICE OF COMPLETE APPLICATION.—Not later than 30 days after the date of receipt of an application under this section, the Secretary shall provide to the applicant a written notice to inform the applicant whether—*

*“(A) the application is complete; or*

*“(B) additional information or materials are needed to complete the application.*

*“(2) APPROVAL OR DENIAL OF APPLICATION.—Not later than 60 days after the date of issuance of the written notice under paragraph (1), the Secretary shall provide to the applicant a written notice informing the applicant whether the Secretary has approved or disapproved the application.*

*“(e) DEVELOPMENT PHASE ACTIVITIES.—Any credit instrument secured under this chapter may be used to finance up to 100 percent of the cost of development phase activities as described in section 601(a)(1)(A).*

**“§ 603. Secured loans**

*“(a) IN GENERAL.—*

*“(1) AGREEMENTS.—Subject to paragraphs (2) and (3), the Secretary may enter into agreements with 1 or more obligors to make secured loans, the proceeds of which shall be used—*

*“(A) to finance eligible project costs of any project selected under section 602;*

*“(B) to refinance interim construction financing of eligible project costs of any project selected under section 602;*

*“(C) to refinance existing Federal credit instruments for rural infrastructure projects; or*

*“(D) to refinance long-term project obligations or Federal credit instruments, if the refinancing provides additional funding capacity for the completion, enhancement, or expansion of any project that—*

*“(i) is selected under section 602; or*

*“(ii) otherwise meets the requirements of section 602.*

*“(2) LIMITATION ON REFINANCING OF INTERIM CONSTRUCTION FINANCING.—A loan under paragraph (1) shall not refinance interim construction financing under paragraph (1)(B) later than 1 year after the date of substantial completion of the project.*

*“(3) RISK ASSESSMENT.—Before entering into an agreement under this subsection, the Secretary, in consultation with the Director of the Office of Management and Budget, shall determine an appropriate capital reserve subsidy amount for each secured loan, taking into account each rating letter provided by an agency under section 602(b)(3)(B).*

*“(b) TERMS AND LIMITATIONS.—*

*“(1) IN GENERAL.—A secured loan under this section with respect to a project shall be on such terms and conditions and contain such covenants, representations, warranties, and requirements (including requirements for audits) as the Secretary determines to be appropriate.*

“(2) *MAXIMUM AMOUNT.*—The amount of a secured loan under this section shall not exceed the lesser of 49 percent of the reasonably anticipated eligible project costs or if the secured loan does not receive an investment grade rating, the amount of the senior project obligations.

“(3) *PAYMENT.*—A secured loan under this section—

“(A) shall—

“(i) be payable, in whole or in part, from—

“(I) tolls;

“(II) user fees;

“(III) payments owing to the obligor under a public-private partnership; or

“(IV) other dedicated revenue sources that also secure the senior project obligations; and

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

“(B) may have a lien on revenues described in subparagraph (A), subject to any lien securing project obligations.

“(4) *INTEREST RATE.*—

“(A) *IN GENERAL.*—Except as provided in subparagraphs (B) and (C), the interest rate on a secured loan under this section shall be not less than the yield on United States Treasury securities of a similar maturity to the maturity of the secured loan on the date of execution of the loan agreement.

“(B) *RURAL INFRASTRUCTURE PROJECTS.*—

“(i) *IN GENERAL.*—The interest rate of a loan offered to a rural infrastructure project under this chapter shall be at  $\frac{1}{2}$  of the Treasury Rate in effect on the date of execution of the loan agreement.

“(ii) *APPLICATION.*—The rate described in clause (i) shall only apply to any portion of a loan the subsidy cost of which is funded by amounts set aside for rural infrastructure projects under section 608(a)(3)(A).

“(C) *LIMITED BUYDOWNS.*—The interest rate of a secured loan under this section may not be lowered by more than the lower of—

“(i)  $1\frac{1}{2}$  percentage points (150 basis points); or

“(ii) the amount of the increase in the interest rate.

“(5) *MATURITY DATE.*—The final maturity date of the secured loan shall be the lesser of—

“(A) 35 years after the date of substantial completion of the project; and

“(B) if the useful life of the capital asset being financed is of a lesser period, the useful life of the asset.

“(6) *NONSUBORDINATION.*—

“(A) *IN GENERAL.*—Except as provided in subparagraph (B), the secured loan shall not be subordinated to the claims of any holder of project obligations in the event of bankruptcy, insolvency, or liquidation of the obligor.

“(B) *PREEXISTING INDENTURE.*—

“(i) *IN GENERAL.*—The Secretary shall waive the requirement under subparagraph (A) for a public agency borrower that is financing ongoing capital programs

and has outstanding senior bonds under a preexisting indenture, if—

“(I) the secured loan is rated in the A category or higher;

“(II) the secured loan is secured and payable from pledged revenues not affected by project performance, such as a tax-backed revenue pledge or a system-backed pledge of project revenues; and

“(III) the TIFIA program share of eligible project costs is 33 percent or less.

“(ii) *LIMITATION.*—If the Secretary waives the non-subordination requirement under this subparagraph—

“(I) the maximum credit subsidy to be paid by the Federal Government shall be not more than 10 percent of the principal amount of the secured loan; and

“(II) the obligor shall be responsible for paying the remainder of the subsidy cost, if any.

“(7) *FEES.*—The Secretary may establish fees at a level sufficient to cover all or a portion of the costs to the Federal Government of making a secured loan under this section.

“(8) *NON-FEDERAL SHARE.*—The proceeds of a secured loan under this chapter may be used for any non-Federal share of project costs required under this title or chapter 53 of title 49, if the loan is repayable from non-Federal funds.

“(9) *MAXIMUM FEDERAL INVOLVEMENT.*—The total Federal assistance provided on a project receiving a loan under this chapter shall not exceed 80 percent of the total project cost.

“(c) *REPAYMENT.*—

“(1) *SCHEDULE.*—The Secretary shall establish a repayment schedule for each secured loan under this section based on—

“(A) the projected cash flow from project revenues and other repayment sources; and

“(B) the useful life of the project.

“(2) *COMMENCEMENT.*—Scheduled loan repayments of principal or interest on a secured loan under this section shall commence not later than 5 years after the date of substantial completion of the project.

“(3) *DEFERRED PAYMENTS.*—

“(A) *IN GENERAL.*—If, at any time after the date of substantial completion of the project, the project is unable to generate sufficient revenues to pay the scheduled loan repayments of principal and interest on the secured loan, the Secretary may, subject to subparagraph (C), allow the obligor to add unpaid principal and interest to the outstanding balance of the secured loan.

“(B) *INTEREST.*—Any payment deferred under subparagraph (A) shall—

“(i) continue to accrue interest in accordance with subsection (b)(4) until fully repaid; and

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

“(C) *CRITERIA.*—

“(i) *IN GENERAL.*—Any payment deferral under subparagraph (A) shall be contingent on the project meeting criteria established by the Secretary.

“(ii) *REPAYMENT STANDARDS.*—The criteria established pursuant to clause (i) shall include standards for reasonable assurance of repayment.

“(4) *PREPAYMENT.*—

“(A) *USE OF EXCESS REVENUES.*—Any excess revenues that remain after satisfying scheduled debt service requirements on the project obligations and secured loan and all deposit requirements under the terms of any trust agreement, bond resolution, or similar agreement securing project obligations may be applied annually to prepay the secured loan without penalty.

“(B) *USE OF PROCEEDS OF REFINANCING.*—The secured loan may be prepaid at any time without penalty from the proceeds of refinancing from non-Federal funding sources.

“(d) *SALE OF SECURED LOANS.*—

“(1) *IN GENERAL.*—Subject to paragraph (2), as soon as practicable after substantial completion of a project and after notifying the obligor, the Secretary may sell to another entity or reoffer into the capital markets a secured loan for the project if the Secretary determines that the sale or reoffering can be made on favorable terms.

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

“(e) *LOAN GUARANTEES.*—

“(1) *IN GENERAL.*—The Secretary may provide a loan guarantee to a lender in lieu of making a secured loan under this section if the Secretary determines that the budgetary cost of the loan guarantee is substantially the same as that of a secured loan.

“(2) *TERMS.*—The terms of a loan guarantee under paragraph (1) shall be consistent with the terms required under this section for a secured loan, except that the rate on the guaranteed loan and any prepayment features shall be negotiated between the obligor and the lender, with the consent of the Secretary.

#### “§ 604. *Lines of credit*

“(a) *IN GENERAL.*—

“(1) *AGREEMENTS.*—Subject to paragraphs (2) through (4), the Secretary may enter into agreements to make available to 1 or more obligors lines of credit in the form of direct loans to be made by the Secretary at future dates on the occurrence of certain events for any project selected under section 602.

“(2) *USE OF PROCEEDS.*—The proceeds of a line of credit made available under this section shall be available to pay debt service on project obligations issued to finance eligible project costs, extraordinary repair and replacement costs, operation and maintenance expenses, and costs associated with unexpected Federal or State environmental restrictions.

“(3) *RISK ASSESSMENT.*—Before entering into an agreement under this subsection, the Secretary, in consultation with the Director of the Office of Management and Budget and each rating agency providing a preliminary rating opinion letter under section 602(b)(3), shall determine an appropriate capital reserve subsidy amount for each line of credit, taking into account the rating opinion letter.

“(4) *INVESTMENT-GRADE RATING REQUIREMENT.*—The funding of a line of credit under this section shall be contingent on the senior obligations of the project receiving an investment-grade rating from 2 rating agencies.

“(b) *TERMS AND LIMITATIONS.*—

“(1) *IN GENERAL.*—A line of credit under this section with respect to a project shall be on such terms and conditions and contain such covenants, representations, warranties, and requirements (including requirements for audits) as the Secretary determines to be appropriate.

“(2) *MAXIMUM AMOUNTS.*—The total amount of a line of credit under this section shall not exceed 33 percent of the reasonably anticipated eligible project costs.

“(3) *DRAWS.*—Any draw on a line of credit under this section shall—

“(A) represent a direct loan; and

“(B) be made only if net revenues from the project (including capitalized interest, but not including reasonably required financing reserves) are insufficient to pay the costs specified in subsection (a)(2).

“(4) *INTEREST RATE.*—Except as provided in subparagraphs (B) and (C) of section 603(b)(4), the interest rate on a direct loan resulting from a draw on the line of credit shall be not less than the yield on 30-year United States Treasury securities, as of the date of execution of the line of credit agreement.

“(5) *SECURITY.*—A line of credit issued under this section—

“(A) shall—

“(i) be payable, in whole or in part, from—

“(I) tolls;

“(II) user fees;

“(III) payments owing to the obligor under a public-private partnership; or

“(IV) other dedicated revenue sources that also secure the senior project obligations; and

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

“(B) may have a lien on revenues described in subparagraph (A), subject to any lien securing project obligations.

“(6) *PERIOD OF AVAILABILITY.*—The full amount of a line of credit under this section, to the extent not drawn upon, shall be available during the 10-year period beginning on the date of substantial completion of the project.

“(7) *RIGHTS OF THIRD-PARTY CREDITORS.*—

“(A) *AGAINST FEDERAL GOVERNMENT.*—A third-party creditor of the obligor shall not have any right against the Federal Government with respect to any draw on a line of credit under this section.



“(B) ASSIGNMENT.—An obligor may assign a line of credit under this section to—

“(i) 1 or more lenders; or

“(ii) a trustee on the behalf of such a lender.

“(8) NONSUBORDINATION.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), a direct loan under this section shall not be subordinated to the claims of any holder of project obligations in the event of bankruptcy, insolvency, or liquidation of the obligor.

“(B) PRE-EXISTING INDENTURE.—

“(i) IN GENERAL.—The Secretary shall waive the requirement of subparagraph (A) for a public agency borrower that is financing ongoing capital programs and has outstanding senior bonds under a preexisting indenture, if—

“(I) the line of credit is rated in the A category or higher;

“(II) the TIFIA program loan resulting from a draw on the line of credit is payable from pledged revenues not affected by project performance, such as a tax-backed revenue pledge or a system-backed pledge of project revenues; and

“(III) the TIFIA program share of eligible project costs is 33 percent or less.

“(ii) LIMITATION.—If the Secretary waives the non-subordination requirement under this subparagraph—

“(I) the maximum credit subsidy to be paid by the Federal Government shall be not more than 10 percent of the principal amount of the secured loan; and

“(II) the obligor shall be responsible for paying the remainder of the subsidy cost.

“(9) FEES.—The Secretary may establish fees at a level sufficient to cover all or a portion of the costs to the Federal Government of providing a line of credit under this section.

“(10) RELATIONSHIP TO OTHER CREDIT INSTRUMENTS.—A project that receives a line of credit under this section also shall not receive a secured loan or loan guarantee under section 603 in an amount that, combined with the amount of the line of credit, exceeds 49 percent of eligible project costs.

“(c) REPAYMENT.—

“(1) TERMS AND CONDITIONS.—The Secretary shall establish repayment terms and conditions for each direct loan under this section based on—

“(A) the projected cash flow from project revenues and other repayment sources; and

“(B) the useful life of the asset being financed.

“(2) TIMING.—All repayments of principal or interest on a direct loan under this section shall be scheduled—

“(A) to commence not later than 5 years after the end of the period of availability specified in subsection (b)(6); and



*“(B) to conclude, with full repayment of principal and interest, by the date that is 25 years after the end of the period of availability specified in subsection (b)(6).”*

**“§ 605. Program administration**

*“(a) REQUIREMENT.—The Secretary shall establish a uniform system to service the Federal credit instruments made available under this chapter.*

*“(b) FEES.—The Secretary may collect and spend fees, contingent on authority being provided in appropriations Acts, at a level that is sufficient to cover—*

*“(1) the costs of services of expert firms retained pursuant to subsection (d); and*

*“(2) all or a portion of the costs to the Federal Government of servicing the Federal credit instruments.*

*“(c) SERVICER.—*

*“(1) IN GENERAL.—The Secretary may appoint a financial entity to assist the Secretary in servicing the Federal credit instruments.*

*“(2) DUTIES.—A servicer appointed under paragraph (1) shall act as the agent for the Secretary.*

*“(3) FEE.—A servicer appointed under paragraph (1) shall receive a servicing fee, subject to approval by the Secretary.*

*“(d) ASSISTANCE FROM EXPERT FIRMS.—The Secretary may retain the services of expert firms, including counsel, in the field of municipal and project finance to assist in the underwriting and servicing of Federal credit instruments.*

*“(e) EXPEDITED PROCESSING.—The Secretary shall implement procedures and measures to economize the time and cost involved in obtaining approval and the issuance of credit assistance under this chapter.*

**“§ 606. State and local permits**

*“The provision of credit assistance under this chapter with respect to a project shall not—*

*“(1) relieve any recipient of the assistance of any obligation to obtain any required State or local permit or approval with respect to the project;*

*“(2) limit the right of any unit of State or local government to approve or regulate any rate of return on private equity invested in the project; or*

*“(3) otherwise supersede any State or local law (including any regulation) applicable to the construction or operation of the project.*

**“§ 607. Regulations**

*“The Secretary may promulgate such regulations as the Secretary determines to be appropriate to carry out this chapter.*

**“§ 608. Funding**

*“(a) FUNDING.—*

*“(1) SPENDING AND BORROWING AUTHORITY.—Spending and borrowing authority for a fiscal year to enter into Federal credit instruments shall be promptly apportioned to the Secretary on a fiscal-year basis.*

“(2) REESTIMATES.—If the subsidy cost of a Federal credit instrument is reestimated, the cost increase or decrease of the reestimate shall be borne by, or benefit, the general fund of the Treasury, consistent with section 504(f) the Congressional Budget Act of 1974 (2 U.S.C. 661c(f)).

“(3) RURAL SET-ASIDE.—

“(A) IN GENERAL.—Of the total amount of funds made available to carry out this chapter for each fiscal year, not more than 10 percent shall be set aside for rural infrastructure projects.

“(B) REOBLIGATION.—Any amounts set aside under subparagraph (A) that remain unobligated by June 1 of the fiscal year for which the amounts were set aside shall be available for obligation by the Secretary on projects other than rural infrastructure projects.

“(4) REDISTRIBUTION OF AUTHORIZED FUNDING.—

“(A) IN GENERAL.—Beginning in fiscal year 2014, on April 1 of each fiscal year, if the cumulative unobligated and uncommitted balance of funding available exceeds 75 percent of the amount made available to carry out this chapter for that fiscal year, the Secretary shall distribute to the States the amount of funds and associated obligation authority in excess of that amount.

“(B) DISTRIBUTION.—The amounts and obligation authority distributed under this paragraph shall be distributed, in the same manner as obligation authority is distributed to the States for the fiscal year, based on the proportion that—

“(i) the relative share of each State of obligation authority for the fiscal year; bears to

“(ii) the total amount of obligation authority distributed to all States for the fiscal year.

“(C) PURPOSE.—Funds distributed under subparagraph (B) shall be available for any purpose described in section 133(b).

“(5) AVAILABILITY.—Amounts made available to carry out this chapter shall remain available until expended.

“(6) ADMINISTRATIVE COSTS.—Of the amounts made available to carry out this chapter, the Secretary may use not more than 0.50 percent for each fiscal year for the administration of this chapter.

“(b) CONTRACT AUTHORITY.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, execution of a term sheet by the Secretary of a Federal credit instrument that uses amounts made available under this chapter shall impose on the United States a contractual obligation to fund the Federal credit investment.

“(2) AVAILABILITY.—Amounts made available to carry out this chapter for a fiscal year shall be available for obligation on October 1 of the fiscal year.

#### “§ 609. Reports to Congress

“(a) IN GENERAL.—On June 1, 2012, and every 2 years thereafter, the Secretary shall submit to Congress a report summarizing the financial performance of the projects that are receiving, or have

received, assistance under this chapter (other than section 610), including a recommendation as to whether the objectives of this chapter (other than section 610) are best served by—

“(1) continuing the program under the authority of the Secretary;

“(2) establishing a Federal corporation or federally sponsored enterprise to administer the program; or

“(3) phasing out the program and relying on the capital markets to fund the types of infrastructure investments assisted by this chapter (other than section 610) without Federal participation.

“(b) APPLICATION PROCESS REPORT.—

“(1) IN GENERAL.—Not later than December 1, 2012, and annually thereafter, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report that includes a list of all of the letters of interest and applications received from project sponsors for assistance under this chapter (other than section 610) during the preceding fiscal year.

“(2) INCLUSIONS.—

“(A) IN GENERAL.—Each report under paragraph (1) shall include, at a minimum, a description of, with respect to each letter of interest and application included in the report—

“(i) the date on which the letter of interest or application was received;

“(ii) the date on which a notification was provided to the project sponsor regarding whether the application was complete or incomplete;

“(iii) the date on which a revised and completed application was submitted (if applicable);

“(iv) the date on which a notification was provided to the project sponsor regarding whether the project was approved or disapproved; and

“(v) if the project was not approved, the reason for the disapproval.

“(B) CORRESPONDENCE.—Each report under paragraph (1) shall include copies of any correspondence provided to the project sponsor in accordance with section 602(d).”.

## **DIVISION B—PUBLIC TRANSPORTATION**

### **SEC. 20001. SHORT TITLE.**

This division may be cited as the “Federal Public Transportation Act of 2012”.

### **SEC. 20002. REPEALS.**

(a) CHAPTER 53.—Chapter 53 of title 49, United States Code, is amended by striking sections 5308, 5316, 5317, 5320, and 5328.

(b) TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY.—Section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note) is repealed.

(c) SAFETEA-LU.—The following provisions are repealed:

tegic Plan, encourages state freight plans and advisory committees, and provides incentives for states that fund projects to improve freight movement.

#### *America fast forward*

Given our massive investment needs and the limited funding available, we need to find ways to better leverage Federal dollars by encouraging additional non-Federal investment and helping to accelerate the benefits of State and locally funded transportation projects.

This conference report builds upon the success of the TIFIA program to help communities leverage their transportation resources and stretch Federal dollars further than they have been stretched before. The conference report modifies the TIFIA program by increasing funding for the program to \$1 billion per year, by increasing the maximum share of project costs from 33 percent to 49 percent, by allowing TIFIA to be used to support a related set of projects, and by setting aside funding for projects in rural areas at more favorable terms.

#### *Gulf Coast restoration*

The conference report modifies a Senate provision related to Gulf Coast restoration known as the Resources and Ecosystems Sustainability, Tourism Opportunities and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act). The provision establishes the Gulf Coast Restoration Trust Fund and places in the Trust Fund 80% of all civil penalties paid by responsible parties in connection with the Deepwater Horizon oil spill. Funding may be used to invest in projects and activities to restore the long-term health of the coastal ecosystem and local economies in the Gulf Coast Region, which includes the states of Mississippi, Louisiana, Alabama, Florida, and Texas. A portion of the funds will be allocated directly and equally to the five Gulf Coast states for ecological and economic recovery along the coast. A portion will be provided to the Gulf Coast Ecosystem Restoration Council established by the bill to develop and fund a comprehensive plan for the restoration of Gulf Coast ecosystems. A portion will be allocated among the states using an impact-based formula to implement state plans that have been approved by the Council. Finally, a portion of the fines will be allocated to a Gulf Coast ecosystem restoration, science, observation, monitoring and technology program and for grants to nongovernmental entities for the establishment of Gulf Coast centers of excellence.

#### *Harbor maintenance*

The Conference report modifies a Senate provision highlighting the significance of the nation's ports for efficient movement of goods and products and the need for increased investment in the maintenance of these ports to promote the economic competitiveness of the United States. The provision states the Sense of Congress that the Administration should request and the Congress should fully expend each year all of the revenues collected in the Harbor Maintenance Trust Fund (HMTF) for the operation and maintenance of the nation's federally maintained ports. The provision also