

111TH CONGRESS
1ST SESSION

S. 238

To provide \$50,000,000,000 in new transportation infrastructure funding through bonding to empower States and local governments to complete significant infrastructure projects across all modes of transportation, including roads, bridges, rail and transit systems, ports, and inland waterways, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 7, 2009

Mr. WYDEN (for himself, Mr. THUNE, Ms. KLOBUCHAR, and Ms. COLLINS) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To provide \$50,000,000,000 in new transportation infrastructure funding through bonding to empower States and local governments to complete significant infrastructure projects across all modes of transportation, including roads, bridges, rail and transit systems, ports, and inland waterways, 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; ETC.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Build America Bonds Act of 2009”.

1 (b) REFERENCES TO INTERNAL REVENUE CODE OF
2 1986.—Except as otherwise expressly provided, whenever
3 in this Act an amendment or repeal is expressed in terms
4 of an amendment to, or repeal of, a section or other provi-
5 sion, the reference shall be considered to be made to a
6 section or other provision of the Internal Revenue Code
7 of 1986.

8 **SEC. 2. FINDINGS AND PURPOSE.**

9 (a) FINDINGS.—Congress finds the following:

10 (1) Our Nation’s highways, transit systems,
11 railroads, ports, and inland waterways drive our
12 economy, enabling all industries to achieve growth
13 and productivity that makes America strong and
14 prosperous.

15 (2) The establishment, maintenance, and im-
16 provement of the national transportation network is
17 a national priority, for economic, environmental, en-
18 ergy, security, and other reasons.

19 (3) The ability to move people and goods is crit-
20 ical to maintaining State, metropolitan, rural, and
21 local economies.

22 (4) The construction of infrastructure requires
23 the skills of numerous occupations, including those
24 in the contracting, engineering, planning and design,

1 materials supply, manufacturing, distribution, and
2 safety industries.

3 (5) Investing in transportation infrastructure
4 creates long-term capital assets for the Nation that
5 will help the United States address its enormous in-
6 frastructure needs and improve its economic produc-
7 tivity.

8 (6) Investment in transportation infrastructure
9 creates jobs and spurs economic activity to put peo-
10 ple back to work and stimulate the economy.

11 (7) Every billion dollars in transportation in-
12 vestment has the potential to create up to 47,500
13 jobs.

14 (8) Every dollar invested in the Nation's trans-
15 portation infrastructure yields at least \$5.70 in eco-
16 nomic benefits because of reduced delays, improved
17 safety, and reduced vehicle operating costs.

18 (9) Numerous experts have noted that the esti-
19 mated cost to maintain and improve our Nation's
20 highways, bridges, and other critical transportation
21 infrastructure significantly exceeds what is currently
22 being provided by all levels of government.

23 (b) PURPOSE.—The purpose of this Act is to provide
24 financing for additional transportation infrastructure cap-
25 ital investments.

1 **SEC. 3. CREDIT TO HOLDERS OF BUILD AMERICA BONDS.**

2 (a) IN GENERAL.—Subpart I of part IV of sub-
3 chapter A of chapter 1 is amended by adding at the end
4 the following new section:

5 **“SEC. 54F. BUILD AMERICA BONDS.**

6 “(a) BUILD AMERICA BOND.—For purposes of this
7 subpart, the term ‘Build America bond’ means any bond
8 issued as part of an issue if—

9 “(1) 100 percent of the available project pro-
10 ceeds of such issue are to be used for expenditures
11 incurred after the date of the enactment of this sec-
12 tion for 1 or more qualified projects pursuant to an
13 allocation of such proceeds to such project or
14 projects by the Transportation Finance Corporation,

15 “(2) the bond is issued by the Transportation
16 Finance Corporation and is in registered form (with-
17 in the meaning of section 149(a)),

18 “(3) the issuer designates such bond for pur-
19 poses of this section,

20 “(4) the Transportation Finance Corporation
21 certifies that it meets the State contribution require-
22 ment of subsection (h) with respect to such project,
23 as in effect on the date of issuance,

24 “(5) the Transportation Finance Corporation
25 certifies that the State in which an approved quali-

1 fied project is located meets the requirement de-
2 scribed in subsection (i),

3 “(6) the face amount of such bond, when added
4 to the face amount of all Build America bonds pre-
5 viously designated under paragraph (3) and issued
6 in the calendar year, does not exceed the Build
7 America bond limitation for such year under sub-
8 section (d),

9 “(7) the term of each bond which is part of
10 such issue does not exceed 30 years,

11 “(8) the payment of principal with respect to
12 such bond is the obligation of the Transportation Fi-
13 nance Corporation, and

14 “(9) the issue meets the requirements of sub-
15 section (e).

16 “(b) QUALIFIED PROJECT.—For purposes of this
17 section, the term ‘qualified project’ means the capital im-
18 provements to any transportation infrastructure project of
19 any governmental unit or other person, including roads,
20 bridges, rail and transit systems, ports, and inland water-
21 ways, proposed by 1 or more States and approved by the
22 Transportation Finance Corporation, but does not include
23 costs of operations or maintenance with respect to such
24 project.

1 “(c) APPLICABLE CREDIT RATE.—In lieu of section
 2 54A(b)(3), for purposes of section 54A(b)(2), the applica-
 3 ble credit rate with respect to an issue under this section
 4 is the rate equal to an average market yield (as of the
 5 day before the date of sale of the issue) on outstanding
 6 long-term corporate debt obligations (determined in such
 7 manner as the Secretary prescribes).

8 “(d) LIMITATION ON AMOUNT OF BONDS DES-
 9 IGNATED.—

10 “(1) NATIONAL LIMITATION.—There is a Build
 11 America bond limitation for each calendar year.
 12 Such limitation is—

13 “(A) \$5,000,000,000 for 2009,

14 “(B) \$5,000,000,000 for 2010,

15 “(C) \$10,000,000,000 for 2011,

16 “(D) \$10,000,000,000 for 2012,

17 “(E) \$10,000,000,000 for 2013,

18 “(F) \$10,000,000,000 for 2014, and

19 “(G) except as provided in paragraph (4),
 20 zero thereafter.

21 “(2) MINIMUM ALLOCATIONS TO STATES.—In
 22 making allocations for each calendar year under sub-
 23 section (a)(1), the Transportation Finance Corpora-
 24 tion shall ensure that the amount allocated for quali-
 25 fied projects located in each State for such calendar

1 year is not less than 1 percent of the total amount
2 allocated for such year.

3 “(3) CARRYOVER OF UNUSED ISSUANCE LIM-
4 TATION.—If for any calendar year the limitation
5 amount imposed by paragraph (1) exceeds the
6 amount of Build America bonds issued during such
7 year, such excess shall be carried forward to 1 or
8 more succeeding calendar years as an addition to the
9 limitation imposed by paragraph (1) and until used
10 by issuance of Build America bonds.

11 “(4) ISSUANCE OF SMALL DENOMINATION
12 BONDS.—From the Build America bond limitation
13 for each year, the Transportation Finance Corpora-
14 tion shall issue a limited quantity of Build America
15 bonds in small denominations suitable for purchase
16 as gifts by individual investors wishing to show their
17 support for investing in America’s transportation in-
18 frastructure.

19 “(e) SPECIAL RULES RELATING TO EXPENDI-
20 TURES.—

21 “(1) IN GENERAL.—An issue shall be treated as
22 meeting the requirements of this subsection if, as of
23 the date of issuance, the Transportation Finance
24 Corporation reasonably expects—

1 “(A) at least 100 percent of the available
2 project proceeds of such issue are to be spent
3 for 1 or more qualified projects within the 5-
4 year expenditure period beginning on such date,

5 “(B) to incur a binding commitment with
6 a State or third party to spend at least 10 per-
7 cent of the proceeds of such issue, or to com-
8 mence construction, with respect to such
9 projects within the 12-month period beginning
10 on such date, and

11 “(C) to proceed with due diligence to com-
12 plete such projects and to spend the proceeds of
13 such issue.

14 “(2) RULES REGARDING CONTINUING COMPLI-
15 ANCE AFTER 5-YEAR DETERMINATION.—To the ex-
16 tent that less than 100 percent of the available
17 project proceeds of such issue are expended by the
18 close of the 5-year expenditure period beginning on
19 the date of issuance, the Transportation Finance
20 Corporation shall redeem all of the nonqualified
21 bonds within 90 days after the end of such period.
22 For purposes of this paragraph, the amount of the
23 nonqualified bonds required to be redeemed shall be
24 determined in the same manner as under section
25 142.

1 “(3) REALLOCATION.—In the event the recipi-
2 ent of an allocation under subsection (a)(1) after no-
3 tice and a reasonable opportunity to take corrective
4 action fails to demonstrate to the satisfaction of the
5 Transportation Finance Corporation that its actions
6 will allow the Transportation Finance Corporation to
7 meet the requirements under this subsection, the
8 Transportation Finance Corporation may redis-
9 tribute the allocation meant for such recipient to
10 other recipients.

11 “(f) RECAPTURE OF PORTION OF CREDIT WHERE
12 CESSATION OF COMPLIANCE.—If any bond which when
13 issued purported to be a Build America bond ceases to
14 be such a bond, the Transportation Finance Corporation
15 shall pay to the United States (at the time required by
16 the Secretary) an amount equal to the sum of—

17 “(1) the aggregate of the credits allowable
18 under section 54A with respect to such bond (deter-
19 mined without regard to section 54A(c)) for taxable
20 years ending during the calendar year in which such
21 cessation occurs and each succeeding calendar year
22 ending with the calendar year in which such bond is
23 redeemed by the Transportation Finance Corpora-
24 tion, and

1 “(2) interest at the underpayment rate under
2 section 6621 on the amount determined under para-
3 graph (1) for each calendar year for the period be-
4 ginning on the first day of such calendar year.

5 “(g) BUILD AMERICA BONDS TRUST ACCOUNT.—

6 “(1) IN GENERAL.—The following amounts
7 shall be held in a Build America Bonds Trust Ac-
8 count by the Transportation Finance Corporation:

9 “(A) The proceeds from the sale of all
10 bonds issued under this section.

11 “(B) The investment earnings on proceeds
12 from the sale of such bonds.

13 “(C) The amount described in paragraph
14 (2).

15 “(D) Any earnings on any amounts de-
16 scribed in subparagraph (A), (B), or (C).

17 “(2) APPROPRIATION OF REVENUES.—There is
18 hereby appropriated to the Build America Bonds
19 Trust Account an amount equal to the lesser of—

20 “(A) the revenues resulting from the impo-
21 sition of fees pursuant to section 13031 of the
22 Consolidated Omnibus Budget Reconciliation
23 Act of 1985 (19 U.S.C. 58c) for fiscal years be-
24 ginning after September 31, 2009, or

25 “(B) \$50,000,000,000.

1 “(3) USE OF FUNDS.—Amounts in the Build
2 America Bonds Trust Account may be used only to
3 pay costs of qualified projects, redeem Build Amer-
4 ica bonds, and fund the operations of the Transpor-
5 tation Finance Corporation, except that amounts
6 withdrawn from the Build America Bonds Trust Ac-
7 count to pay costs of qualified projects may not ex-
8 ceed the proceeds from the sale of Build America
9 bonds described in subsection (a)(1).

10 “(4) USE OF REMAINING FUNDS IN BUILD
11 AMERICA BONDS TRUST ACCOUNT.—Upon the re-
12 demption of all Build America bonds issued under
13 this section, any remaining amounts in the Build
14 America Bonds Trust Account shall be available to
15 the Transportation Finance Corporation to pay the
16 costs of any qualified project.

17 “(5) APPLICABILITY OF FEDERAL LAW.—The
18 requirements of any Federal law, including titles 23,
19 40, and 49 of the United States Code, which would
20 otherwise apply to projects to which the United
21 States is a party or to funds made available under
22 such law and projects assisted with those funds shall
23 apply to—

24 “(A) funds made available under the Build
25 America Bonds Trust Account for similar quali-

1 fied projects, including contributions required
2 under subsection (h), and

3 “(B) similar qualified projects assisted by
4 the Transportation Finance Corporation
5 through the use of such funds.

6 “(6) INVESTMENT.—Subject to subsections (e)
7 and (f), it shall be the duty of the Transportation
8 Finance Corporation to invest in investment grade
9 obligations such portion of the Build America Bonds
10 Trust Account as is not, in the judgment of the
11 Board of Directors of the Transportation Finance
12 Corporation, required to meet current withdrawals.
13 To the maximum extent practicable, investments
14 should be made in securities that support infrastruc-
15 ture investment at the State and local level.

16 “(h) STATE CONTRIBUTION REQUIREMENTS.—

17 “(1) IN GENERAL.—For purposes of subsection
18 (a)(4), the State contribution requirement of this
19 subsection is met with respect to any qualified
20 project if the Transportation Finance Corporation
21 has received from 1 or more States, not later than
22 the date of issuance of the bond, written commit-
23 ments for matching contributions of not less than 20
24 percent (or such smaller percentage as determined

1 under title 23, United States Code, for such State)
2 of the cost of the qualified project.

3 “(2) STATE MATCHING CONTRIBUTIONS MAY
4 NOT INCLUDE FEDERAL FUNDS.—For purposes of
5 this subsection, State matching contributions shall
6 not be derived, directly or indirectly, from Federal
7 funds, including any transfers from the Highway
8 Trust Fund under section 9503.

9 “(i) UTILIZATION OF UPDATED CONSTRUCTION
10 TECHNOLOGY FOR QUALIFIED PROJECTS.—For purposes
11 of subsection (a)(5), the requirement of this subsection is
12 met if the appropriate State agency relating to the quali-
13 fied project is utilizing updated construction technologies.

14 “(j) OTHER DEFINITIONS AND SPECIAL RULES.—
15 For purposes of this section—

16 “(1) TRANSPORTATION FINANCE CORPORA-
17 TION.—The term ‘Transportation Finance Corpora-
18 tion’ means the corporation established under sec-
19 tion 4(a) of the Build America Bonds Act of 2009.

20 “(2) CREDITS MAY BE TRANSFERRED.—Noth-
21 ing in any law or rule of law shall be construed to
22 limit the transferability of the credit or bond allowed
23 by this section through sale and repurchase agree-
24 ments.

1 “(3) PROHIBITION ON USE OF HIGHWAY TRUST
2 FUND.—Notwithstanding any other provision of law,
3 no funds derived from the Highway Trust Fund es-
4 tablished under section 9503 shall be used to pay for
5 credits under this section or for the administrative
6 costs of the Transportation Finance Corporation.”.

7 (b) CONFORMING AMENDMENTS.—

8 (1) Paragraph (1) of section 54A(d) of the In-
9 ternal Revenue Code of 1986 is amended—

10 (A) by striking “or” at the end of subpara-
11 graph (C),

12 (B) by inserting “or” at the end of sub-
13 paragraph (D),

14 (C) by inserting after subparagraph (D)
15 the following new subparagraph:

16 “(E) a Build America bond,” and

17 (D) by inserting “(paragraphs (3), (4),
18 and (6), in the case of a Build America bond)”
19 after “and (6)”.

20 (2) Subparagraph (C) of section 54A(d)(2) of
21 such Code is amended by striking “and” at the end
22 of clause (iii), by striking the period at the end of
23 clause (iv) and inserting “, and”, and by adding at
24 the end the following new clause:

1 “(v) in the case of a Build America
2 bond, a purpose specified in section
3 54F(a)(1).”.

4 (c) CLERICAL AMENDMENT.—The table of sections
5 for subpart I of part IV of subchapter A of chapter 1 of
6 the Internal Revenue Code of 1986 is amended by adding
7 at the end the following new item:

“Sec. 54F. Build America bonds.”.

8 (d) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to bonds issued after the date of
10 the enactment of this Act.

11 **SEC. 4. TRANSPORTATION FINANCE CORPORATION.**

12 (a) RECOGNITION AND STATUS.—Congress grants
13 consent and recognition to the establishment by 2 or more
14 State infrastructure banks (established under section 610
15 of title 23, United States Code) of a multistate organiza-
16 tion to be known as the “Transportation Finance Corpora-
17 tion” (hereafter in this section referred to as the “Cor-
18 poration”). Additional State infrastructure banks may join
19 the Transportation Finance Corporation subsequent to its
20 establishment.

21 (b) FUNCTIONS OF CORPORATION.—The Corpora-
22 tion—

23 (1) is authorized to issue Build America bonds
24 for the financing of qualified projects as required

1 under section 54F of the Internal Revenue Code of
2 1986,

3 (2) is authorized to establish and operate the
4 Build America Bonds Trust Account as required
5 under section 54F(g) of such Code,

6 (3) is authorized to act as a centralized entity
7 to provide financing for qualified projects (as defined
8 in section 54F(b) of such Code),

9 (4) may—

10 (A) leverage resources and stimulate public
11 and private investment in transportation infra-
12 structure,

13 (B) encourage States to create additional
14 opportunities for the financing of transportation
15 infrastructure,

16 (C) perform any other function the sole
17 purpose of which is to carry out the financing
18 of qualified projects through Build America
19 bonds, and

20 (5) not later than February 15 of each year
21 shall submit a report to Congress describing the ac-
22 tivities of the Corporation for the preceding year.

23 (c) EXEMPTION FROM TAXES.—

24 (1) IN GENERAL.—The Corporation, including
25 its franchise, capital, reserves, surplus, sinking

1 funds, mortgages or other security holdings, and in-
2 come, shall be exempt from all taxation now or here-
3 after imposed by the United States, by any territory,
4 dependency, or possession thereof, or by any State,
5 county, municipality, or local taxing authority, ex-
6 cept that any real property of the Corporation shall
7 be subject to State, territorial, county, municipal, or
8 local taxation to the same extent according to its
9 value as other real property is taxed.

10 (2) FINANCIAL OBLIGATIONS.—Build America
11 bonds or other obligations issued by the Corporation
12 and the interest on or tax credits with respect to its
13 bonds or other obligations shall not be subject to
14 taxation by any State, county, municipality, or local
15 taxing authority.

16 (d) CONSTRUCTION REGARDING RECOGNITION AND
17 STATUS.—

18 (1) IN GENERAL.—Nothing in this section shall
19 be construed to establish the Corporation as a de-
20 partment, agency, or instrumentality of the United
21 States Government, to establish the members of any
22 governing board or the officers and employees of the
23 Corporation, as officers or employees of the United
24 States Government, or to subject the Corporation to
25 the provisions of title 31, United States Code.

1 (2) UNITED STATES NOT OBLIGATED.—The de-
2 posit of Federal funds into the Build America Bonds
3 Trust Account established under section 54F(g) of
4 the Internal Revenue Code of 1986 shall not be con-
5 strued as a commitment, guarantee, or obligation on
6 the part of the United States to any third party, nor
7 shall any third party have any right against the
8 United States for payment solely by virtue of the
9 contribution. Any security or debt-financing instru-
10 ment issued by the Corporation shall expressly state
11 that the security or instrument does not constitute
12 a commitment, guarantee, or obligation of the
13 United States.

14 **SEC. 5. ADDITIONAL REVENUES THROUGH EXTENSION OF**
15 **CUSTOMS USER FEES.**

16 Section 13031(j)(3) of the Consolidated Omnibus
17 Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3))
18 is amended—

19 (1) by striking “February 14, 2018” in sub-
20 paragraph (A) and inserting “February 14, 2046”,
21 and

22 (2) by striking “January 31, 2018” in subpara-
23 graph (B)(i) and inserting “January 31, 2046”.

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