[DISCUSSION DRAFT]

112TH CONGRESS
2d Session

H. R. _______

To provide financing assistance for qualified water infrastructure projects,
and for other purposes.

____________________

IN THE HOUSE OF REPRESENTATIVES

M. . ______ introduced the following bill; which was referred to the
Committee on ____________________

____________________

A BILL

To provide financing assistance for qualified water
infrastructure projects, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.
4 (a) SHORT TITLE.—This Act may be cited as the
5 “Water Infrastructure Finance and Innovation Act of
6 2012”.
7 (b) TABLE OF CONTENTS.—The table of contents of
8 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
TITLE I—WATER INFRASTRUCTURE FINANCE AND INNOVATION

Sec. 101. Definitions.
Sec. 102. Authority to provide assistance.
Sec. 103. Application.
Sec. 104. Entities eligible for assistance.
Sec. 105. Projects eligible for assistance.
Sec. 106. Activities eligible for assistance.
Sec. 107. Selection among eligible projects.
Sec. 108. Credit evaluation.
Sec. 109. Terms and conditions.
Sec. 110. Program administration.
Sec. 111. Technical assistance.
Sec. 112. Threshold for assistance.
Sec. 113. Funding.

TITLE II—PRIVATE ACTIVITY BONDS

Sec. 201. Exempt-facility bonds for sewage and water supply facilities.

1 SEC. 2. FINDINGS.

2 Congress finds the following:

3 (1) It is in the national interest to encourage
4 the timely and cost effective rehabilitation and re-
5 placement of aging water and sewer infrastructure.
6
7 (2) The Environmental Protection Agency re-
8 ports—
9
10 (A) $334,000,000,000 is needed to invest
11 in infrastructure improvements over 20 years to
12 ensure the provision of safe water; and
13
14 (B) $202,500,000,000 is needed for pub-
15 licly owned wastewater systems-related infra-
16 structure needs over 20 years.
17
18 (3) Customer rates and local charges are and
19 will remain the primary means of paying for water
20 service and infrastructure.
(4) The municipal bond market and State Revolving Fund programs are the primary long-term means for financing water infrastructure projects, but upfront investment needs are simply too high to be met with these traditional means alone.

(5) Financing constraints make it particularly difficult for State Revolving Funds to support large water infrastructure projects of regional and national significance.

(6) Current financing mechanisms do not sufficiently catalyze private sector investment, while the capital markets, including pension funds, and other investors have a growing interest in infrastructure investment.

(7) This Act will substantially benefit the Nation’s drinking water and wastewater systems by—

(A) addressing the gap in funding for large, regionally, and nationally significant projects by making available direct loans and loan guarantees to reduce borrowing costs and accelerate water infrastructure investment;

(B) enhancing the capacity of State Revolving Fund programs to assist other projects;
(C) facilitating private sector investment in drinking water and wastewater infrastructure; and

(D) promoting compliance with the Federal Water Pollution Control Act and the Safe Drinking Water Act.

(8) As the historical default rate on water and sewer bonds is 0.04 percent, the risk of default on Federal assistance provided under this Act is minimal.

(9) Because loans, loan guarantees, and other credit instruments only incur long-term costs if subsidized or in the event of default, this Act can help to meet the Nation’s water infrastructure needs at minimal long-term cost to the Federal Government.

TITLE I—WATER INFRASTRUCTURE FINANCE AND INNOVATION

SEC. 101. DEFINITIONS.

In this title, the following definitions apply:

(1) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Environmental Protection Agency.
(2) BORROWER.—The term "borrower" means an eligible entity that owes payments of interest or principal on a credit instrument.

(3) COMMUNITY WATER SYSTEM.—The term "community water system" has the meaning given such term in section 1401 of the Safe Drinking Water Act (42 U.S.C. 300(f)).

(4) COST OF A DIRECT LOAN; COST OF A LOAN GUARANTEE.—The terms "cost of a direct loan" and "cost of a loan guarantee" mean the "cost of a direct loan" and "cost of a loan guarantee", respectively, as those terms are used in section 502(5) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5)).

(5) CREDIT INSTRUMENT.—The term "credit instrument" means a direct loan made under this title or a loan or other debt obligation that is subject to a loan guarantee under this title.

(6) DIRECT LOAN.—The term "direct loan"—

(A) means a "direct loan", as such term is defined under section 502(1) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(1)); and

(B) includes a Government purchase of a bond.
(7) **Loan Guarantee.**—The term "loan guarantee" has the meaning given such term under section 502(3) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(3)).

(8) **State Infrastructure Financing Authority.**—The term "State infrastructure financing authority" means the State entity established or designated by the Governor of a State to receive a capitalization grant provided by, or otherwise carry out the requirements of, title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12).

(9) **Treatment Works.**—The term "treatment works" has the meaning given such term under section 212 of Federal Water Pollution Control Act (33 U.S.C. 1292).

**SEC. 102. AUTHORITY TO PROVIDE ASSISTANCE.**

The Administrator may make a direct loan (including a subordinated loan) or a loan guarantee to an eligible entity for eligible activities associated with an eligible project, in accordance with this title.

**SEC. 103. APPLICATION.**

(a) **In General.**—To receive assistance under this title, an eligible entity shall submit to the Administrator
an application at such time, in such manner, and contain-
ing such information as the Administrator may re-
quire.

(b) COMBINED PROJECTS.—In the case of a project eligible for assistance under section 105(8), the Adminis-
trator shall require from the eligible entity a single appli-
cation for the combined group of projects.

SEC. 104. ENTITIES ELIGIBLE FOR ASSISTANCE.

(a) IN GENERAL.—For the purposes of this title, the following are eligible entities:

(1) An entity (other than a State or local highway or road department or agency) that owns or op-
erates a treatment works that serves the general public, including a municipal or regional separate storm sewer system management agency.

(2) An entity that owns or operates a commu-
nity water system.

(3) Any grouping or combination of the above that may be cooperating on an eligible project.

(4) A State infrastructure financing authority, for the purposes of providing assistance to an eligi-
ble project under section 105(8).

(b) PUBLIC-PRIVATE PARTNERSHIPS.—In the case of an entity that is a public-private partnership, a public en-
tity-owned or investor-owned utility shall be the entity eli-
gible for assistance under this title, and not the private
financing or development partner.

SEC. 105. PROJECTS ELIGIBLE FOR ASSISTANCE.

For the purposes of this title, the following are eligi-
ble projects:

(1) A capital project to construct, replace, or
rehabilitate a treatment works or a community
water system.

(2) A capital project to increase the security of
a treatment works or a community water system.

(3) A capital project to reduce the energy con-
sumption needs of a treatment works or a commu-
nity water system, including the implementation of
energy efficient or renewable generation tech-
nologies.

(4) A capital project to increase water effi-
ciency, reduce the demand for water, or reduce the
demand for treatment works or community water
system capacity.

(5) A capital project to manage or control
stormwater.

(6) A capital project to reuse municipal wast-
water or stormwater.
(7) A capital project for the consolidation of two or more treatment works or community water systems.

(8) A group of projects described in any of paragraphs (1) through (7) that are combined for purposes of receiving a single direct loan or loan guarantee.

SEC. 106. ACTIVITIES ELIGIBLE FOR ASSISTANCE.

For the purposes of this title, eligible activities with respect to an eligible project include the following:

(1) Development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, permitting, and other preconstruction engineering and design work.

(2) Construction, reconstruction, rehabilitation, and replacement required for the project.

(3) Acquisition of real property (including interests in real property), environmental mitigation, construction contingencies, and acquisition of equipment.

(4) Funding mechanisms necessary to meet market or affordability requirements, reasonably required reserve funds, capitalized interest issuance expenses, and other carrying costs during construction of the project.
(5) Refinancing of interim construction financing, long term project obligations, or direct loans or loan guarantees made under this title.

SEC. 107. SELECTION AMONG ELIGIBLE PROJECTS.

(a) IN GENERAL.—The Administrator shall select eligible projects to receive assistance under this title based on the following criteria:

(1) The significance of the infrastructure needs addressed by the project, including the economic, environmental, and public health benefits of the project.

(2) The creditworthiness of the project under consideration, including the terms, conditions, financial structure, and security features making up the proposed financing, and the financial assumptions upon which the project is based.

(3) The need for Federal assistance, including the likelihood that the provision of assistance by the Administrator under this title will cause the project to proceed more promptly and with lower costs for financing than would be the case without such assistance.

(4) The degree to which the project financing plan includes public and private financing in addition to assistance under this title.
11

(5) The cost of the direct loan or loan guar-
antee to the Government for the project.

(6) The extent to which the project is nationally
or regionally significant.

(b) SPECIAL RULE FOR COMBINED PROJECTS.—In
the case of a project eligible for assistance under section
105(8), the Administrator shall consider only the criteria
described in paragraphs (1), (2), (3), and (5) of subsection
(a).

(c) REASONABLE ASSURANCE OF PAYMENT.— The
Administrator may select an eligible project for assistance
only if the Administrator finds that there is a reasonable
assurance that all payments will be made on the credit
instrument.

SEC. 108. CREDIT EVALUATION.

(a) IN GENERAL.—The Administrator shall develop
and implement a credit evaluation process before pro-
viding any assistance under this title.

(b) PRELIMINARY RATING OPINION LETTER.—For
purposes of determining creditworthiness under section
107(a)(2), the Administrator may require an eligible enti-
ty to provide a preliminary rating opinion letter from at
least one rating agency, or may use an alternative (including
an internal) credit rating process.
(e) Rule for Certain Combined Projects.—In the case of an eligible project under section 105(8) for which a State infrastructure financing authority is the eligible entity, in addition to the creditworthiness consideration under section 107(a)(2), the Administrator shall evaluate the creditworthiness of each entity represented by the State infrastructure financing authority that will be carrying out any project described under paragraphs (1) through (7) of section 105 that will be part of such eligible project.

SEC. 109. TERMS AND CONDITIONS.

(a) In General.—Direct loans and loan guarantees made under this title shall be on such terms and conditions and contain such covenants, representations, warranties, and requirements (including requirements for audits) as the Administrator may prescribe.

(b) Interest Rate.—

(1) In General.—The interest rate applicable to a credit instrument shall be the rate that is set by reference to a benchmark interest rate on marketable Treasury securities with a similar maturity to such credit instrument, as of the date of execution of the agreement.

(2) Higher Interest Rates.—The Administrator may charge a higher interest rate on a direct
loan if the Administrator determines the risk profile
of the project indicates a higher interest rate is nec-

erary to protect the interests of the United States.

(c) TERM OF LOAN.—The Administrator may provide
assistance under this title only with respect to a credit
instrument the final maturity date of which is not later
than 35 years after the date on which funds are disbursed.

(d) SECURITY FEATURES.—The Administrator shall
require a borrower receiving assistance under this title to
use a rate covenant, coverage requirement, or similar secu-

rity feature supporting the project obligations to ensure
repayment.

(e) DIRECT LOAN REPAYMENTS.—

(1) SCHEDULE.—The Administrator shall es-

tablish a repayment schedule for each direct loan
under this title based on the projected cash flow
from project repayment sources.

(2) COMMENCEMENT.—Scheduled repayments
of principal or interest on a direct loan made under
this title shall commence not later than the earlier
of—

(A) 5 years after the date of substantial
completion of the project, as determined by the
Administrator in a manner set forth at the time
the direct loan is made; or
(B) ____ years after the date on which the direct loan is made.

(3) DEFERRAL OF PAYMENTS.—

(A) IN GENERAL.—If the Administrator determines that a borrower lacks the resources to make scheduled payments on a direct loan made under this title based on circumstances not foreseeable at the time the direct loan is made, the Administrator may allow for the deferral of such payments.

(B) INTERESTS.—Any payment deferred under subparagraph (A) shall—

(i) continue to accrue interest until fully repaid; and

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

(C) CRITERIA.—Any payment deferral under subparagraph (A) shall be contingent on the project meeting criteria established by the Administrator, which shall include standards for reasonable assurance of repayment.

(4) PREPAYMENT.—Payments on the direct loan may be made in advance with no penalty.

(f) SPECIAL RULES FOR LOAN GUARANTEES.—
(1) TERMS.—The terms of a credit instrument that is the subject of a loan guarantee under this title shall be consistent with the terms set forth in this title for a direct loan, except that the interest rate and any pre-payment features on such credit instrument shall be negotiated between the borrower and the lender, with the consent of the Administrator.

(2) INTEREST RATE.—The Administrator may make a loan guarantee under this title only if the Administrator determines that the interest rate on the credit instrument that is subject to such loan guarantee is appropriate, taking into account the prevailing rate of interest in the private sector for similar obligations.

(3) ELIGIBLE LENDER.—The Administrator may not make a loan guarantee under this title unless the lender of the loan or purchaser of the debt security that will be the subject of the loan guarantee is a non-Federal qualified institutional buyer (as defined in section 230.144A(a) of title 17, Code of Federal Regulations (or any successor regulation)), including—

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

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

(4) ADEQUATE SERVICING PROVISIONS REQUIRED.—No loan guarantee may be made under this title for a loan unless the Administrator determines that the lender with respect to such loan is responsible and that adequate servicing provisions have been made for the loans that are the subject of such loan guarantee that are reasonable and protect the financial interest of the United States.

SEC. 110. PROGRAM ADMINISTRATION.

(a) IN GENERAL.—The Administrator shall establish a uniform system to service the direct loans and loan guarantees made under this title.

(b) ASSISTANCE FROM EXPERT FIRMS.—The Administrator 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 direct loans and loan guarantees made under this title.

(c) FEES FOR ADMINISTRATIVE EXPENSES.—
(1) IN GENERAL.—In providing assistance under this title, the Administrator may collect fees for administrative expenses, including premiums for loan guarantees, at a level that is sufficient to cover the costs of services of expert firms and all or a portion of the costs to the Federal Government of servicing the direct loans and loan guarantees made under this title and, as provided in advance in appropriations acts, use such amounts to cover such expenses.

(2) LEVEL OF FEES.—The Administrator shall set such fees at a level that will minimize the cost to the Federal Government and maximize the assistance that can be provided under this title, while providing competitive credit terms to eligible projects, in order to lower borrowing costs and accelerate water infrastructure investment.

SEC. 111. TECHNICAL ASSISTANCE.

The Administrator may use funds appropriated under this title to provide technical assistance to applicants and prospective applicants in constructing financing packages that leverage a mix of public and private funding sources.
SEC. 112. THRESHOLD FOR ASSISTANCE.

The Administrator may provide assistance under this title only with respect to a credit instrument in an amount of $20,000,000 or more.

SEC. 113. FUNDING.

(a) AUTHORIZATION OF APPROPRIATIONS.—

(1) DIRECT LOANS AND LOAN GUARANTEES.—

There are authorized to be appropriated for the cost of providing direct loans and loan guarantees under this title—

(A) [$________________] for fiscal year 2013;

(B) [$________________] for fiscal year 2014;

(C) [$________________] for fiscal year 2015; and

(D) [$________________] for fiscal year 2016, and each fiscal year thereafter.

(2) ADMINISTRATIVE EXPENSES.—There are authorized to be appropriated amounts equal to any fees collected under section 110, and in addition there are authorized to be appropriated for administrative expenses under this title—

(A) [$________________] for fiscal year 2013;
1 (B) [$_{\text{-------------}}$] for fiscal year
2 2014;
3 (C) [$_{\text{-------------}}$] for fiscal year
4 2015; and
5 (D) such sums as may be necessary for fiscal year 2016, and each fiscal year thereafter.
6
7 (b) PAYMENT OF SUBSIDY COST.—A borrower may
8 pay for the cost of a direct loan or loan guarantee under
9 this title, along with the appropriate amount of related
10 administrative expenses, and the Administrator may use
11 such payment, as provided in advance in appropriations
12 Acts, instead of using funds authorized under subsection
13 (a), to make such direct loan or loan guarantee to the bor-
14rower.

TITLe II—PRIVATE ACTIVITY
Bonds

SEC. 201. EXEMPT-FACILITY BONDS FOR SEWAGE AND
WATER SUPPLY FACILITIES.

(a) BONDS FOR WATER AND SEWAGE FACILITIES

EXEMPT FROM VOLUME CAP ON PRIVATE ACTIVITY

BONDS.—Paragraph (3) of section 146(g) of the Internal

Revenue Code of 1986 is amended by inserting “(4), (5),”

after “(2),”.

(b) CONFORMING CHANGE.—Paragraphs (2) and

(3)(B) of section 146(k) of the Internal Revenue Code of
1986 are both amended by striking "(4), (5), (6)," and inserting "(6)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after the date of the enactment of this Act.