

[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 (2) The Environmental Protection Agency re-
7 ports—

8 (A) \$334,000,000,000 is needed to invest
9 in infrastructure improvements over 20 years to
10 ensure the provision of safe water; and

11 (B) \$202,500,000,000 is needed for pub-
12 licly owned wastewater systems-related infra-
13 structure needs over 20 years.

14 (3) Customer rates and local charges are and
15 will remain the primary means of paying for water
16 service and infrastructure.

1 (4) The municipal bond market and State Re-
2 volving Fund programs are the primary long-term
3 means for financing water infrastructure projects,
4 but upfront investment needs are simply too high to
5 be met with these traditional means alone.

6 (5) Financing constraints make it particularly
7 difficult for State Revolving Funds to support large
8 water infrastructure projects of regional and na-
9 tional significance.

10 (6) Current financing mechanisms do not suffi-
11 ciently catalyze private sector investment, while the
12 capital markets, including pension funds, and other
13 investors have a growing interest in infrastructure
14 investment.

15 (7) This Act will substantially benefit the Na-
16 tion's drinking water and wastewater systems by—

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

22 (B) enhancing the capacity of State Re-
23 volving Fund programs to assist other projects;

1 (C) facilitating private sector investment in
2 drinking water and wastewater infrastructure;
3 and

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

7 (8) As the historical default rate on water and
8 sewer bonds is 0.04 percent, the risk of default on
9 Federal assistance provided under this Act is mini-
10 mal.

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

16 **TITLE I—WATER INFRASTRUC-**
17 **TURE FINANCE AND INNOVA-**
18 **TION**

19 **SEC. 101. DEFINITIONS.**

20 In this title, the following definitions apply:

21 (1) **ADMINISTRATOR.**—The term “Adminis-
22 trator” means the Administrator of the Environ-
23 mental Protection Agency.

1 (2) BORROWER.—The term “borrower” means
2 an eligible entity that owes payments of interest or
3 principal on a credit instrument.

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

8 (4) COST OF A DIRECT LOAN; COST OF A LOAN
9 GUARANTEE.—The terms “cost of a direct loan” and
10 “cost of a loan guarantee” mean the “cost of a di-
11 rect loan” and “cost of a loan guarantee”, respec-
12 tively, as those terms are used in section 502(5) of
13 the Federal Credit Reform Act of 1990 (2 U.S.C.
14 661a(5)).

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

19 (6) DIRECT LOAN.—The term “direct loan”—

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

24 (B) includes a Government purchase of a
25 bond.

1 (7) LOAN GUARANTEE.—The term “loan guar-
2 antee” has the meaning given such term under sec-
3 tion 502(3) of the Federal Credit Reform Act of
4 1990 (2 U.S.C. 661a(3)).

5 (8) STATE INFRASTRUCTURE FINANCING AU-
6 THORITY.—The term “State infrastructure financing
7 authority” means the State entity established or des-
8 ignated by the Governor of a State to receive a cap-
9 italization grant provided by, or otherwise carry out
10 the requirements of, title VI of the Federal Water
11 Pollution Control Act (33 U.S.C. 1381 et seq.) or
12 section 1452 of the Safe Drinking Water Act (42
13 U.S.C. 300j-12).

14 (9) TREATMENT WORKS.—The term “treatment
15 works” has the meaning given such term under sec-
16 tion 212 of Federal Water Pollution Control Act (33
17 U.S.C. 1292).

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

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

23 **SEC. 103. APPLICATION.**

24 (a) IN GENERAL.—To receive assistance under this
25 title, an eligible entity shall submit to the Administrator

1 an application at such time, in such manner, and con-
2 taining such information as the Administrator may re-
3 quire.

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

8 **SEC. 104. ENTITIES ELIGIBLE FOR ASSISTANCE.**

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

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

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

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

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

23 (b) PUBLIC-PRIVATE PARTNERSHIPS.—In the case of
24 an entity that is a public-private partnership, a public en-
25 tity-owned or investor-owned utility shall be the entity eli-

1 gible for assistance under this title, and not the private
2 financing or development partner.

3 **SEC. 105. PROJECTS ELIGIBLE FOR ASSISTANCE.**

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

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

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

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

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

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

22 (6) A capital project to reuse municipal waste-
23 water or stormwater.

1 (7) A capital project for the consolidation of
2 two or more treatment works or community water
3 systems.

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

8 **SEC. 106. ACTIVITIES ELIGIBLE FOR ASSISTANCE.**

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

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

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

17 (3) Acquisition of real property (including inter-
18 ests in real property), environmental mitigation, con-
19 struction contingencies, and acquisition of equip-
20 ment.

21 (4) Funding mechanisms necessary to meet
22 market or affordability requirements, reasonably re-
23 quired reserve funds, capitalized interest issuance
24 expenses, and other carrying costs during construc-
25 tion of the project.

1 (5) Refinancing of interim construction financ-
2 ing, long term project obligations, or direct loans or
3 loan guarantees made under this title.

4 **SEC. 107. SELECTION AMONG ELIGIBLE PROJECTS.**

5 (a) IN GENERAL.—The Administrator shall select eli-
6 gible projects to receive assistance under this title based
7 on the following criteria:

8 (1) The significance of the infrastructure needs
9 addressed by the project, including the economic, en-
10 vironmental, and public health benefits of the
11 project.

12 (2) The creditworthiness of the project under
13 consideration, including the terms, conditions, finan-
14 cial structure, and security features making up the
15 proposed financing, and the financial assumptions
16 upon which the project is based.

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

23 (4) The degree to which the project financing
24 plan includes public and private financing in addi-
25 tion to assistance under this title.

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

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

5 (b) SPECIAL RULE FOR COMBINED PROJECTS.—In
6 the case of a project eligible for assistance under section
7 105(8), the Administrator shall consider only the criteria
8 described in paragraphs (1), (2), (3), and (5) of subsection
9 (a).

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

15 **SEC. 108. CREDIT EVALUATION.**

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

19 (b) PRELIMINARY RATING OPINION LETTER.—For
20 purposes of determining creditworthiness under section
21 107(a)(2), the Administrator may require an eligible enti-
22 ty to provide a preliminary rating opinion letter from at
23 least one rating agency, or may use an alternative (includ-
24 ing an internal) credit rating process.

1 (c) RULE FOR CERTAIN COMBINED PROJECTS.—In
2 the case of an eligible project under section 105(8) for
3 which a State infrastructure financing authority is the eli-
4 gible entity, in addition to the creditworthiness consider-
5 ation under section 107(a)(2), the Administrator shall
6 evaluate the creditworthiness of each entity represented by
7 the State infrastructure financing authority that will be
8 carrying out any project described under paragraphs (1)
9 through (7) of section 105 that will be part of such eligible
10 project.

11 **SEC. 109. TERMS AND CONDITIONS.**

12 (a) IN GENERAL.—Direct loans and loan guarantees
13 made under this title shall be on such terms and condi-
14 tions and contain such covenants, representations, warran-
15 ties, and requirements (including requirements for audits)
16 as the Administrator may prescribe.

17 (b) INTEREST RATE.—

18 (1) IN GENERAL.—The interest rate applicable
19 to a credit instrument shall be the rate that is set
20 by reference to a benchmark interest rate on mar-
21 ketable Treasury securities with a similar maturity
22 to such credit instrument, as of the date of execu-
23 tion of the agreement.

24 (2) HIGHER INTEREST RATES.—The Adminis-
25 trator may charge a higher interest rate on a direct

1 loan if the Administrator determines the risk profile
2 of the project indicates a higher interest rate is nec-
3 essary to protect the interests of the United States.

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

8 (d) SECURITY FEATURES.—The Administrator shall
9 require a borrower receiving assistance under this title to
10 use a rate covenant, coverage requirement, or similar secu-
11 rity feature supporting the project obligations to ensure
12 repayment.

13 (e) DIRECT LOAN REPAYMENTS.—

14 (1) SCHEDULE.—The Administrator shall es-
15 tablish a repayment schedule for each direct loan
16 under this title based on the projected cash flow
17 from project repayment sources.

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

22 (A) 5 years after the date of substantial
23 completion of the project, as determined by the
24 Administrator in a manner set forth at the time
25 the direct loan is made; or

1 (B) ☐ years after the date on which the
2 direct loan is made.

3 (3) DEFERRAL OF PAYMENTS.—

4 (A) IN GENERAL.—If the Administrator
5 determines that a borrower lacks the resources
6 to make scheduled payments on a direct loan
7 made under this title based on circumstances
8 not foreseeable at the time the direct loan is
9 made, the Administrator may allow for the de-
10 ferral of such payments.

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

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

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

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

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

24 (f) SPECIAL RULES FOR LOAN GUARANTEES.—

1 (1) TERMS.—The terms of a credit instrument
2 that is the subject of a loan guarantee under this
3 title shall be consistent with the terms set forth in
4 this title for a direct loan, except that the interest
5 rate and any pre-payment features on such credit in-
6 strument shall be negotiated between the borrower
7 and the lender, with the consent of the Adminis-
8 trator.

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

16 (3) ELIGIBLE LENDER.—The Administrator
17 may not make a loan guarantee under this title un-
18 less the lender of the loan or purchaser of the debt
19 security that will be the subject of the loan guar-
20 antee is a non-Federal qualified institutional buyer
21 (as defined in section 230.144A(a) of title 17, Code
22 of Federal Regulations (or any successor regula-
23 tion)), including—

24 (A) a qualified retirement plan (as defined
25 in section 4974(c) of the Internal Revenue Code

1 of 1986) that is a non-Federal qualified institu-
2 tional buyer; and

3 (B) a governmental plan (as defined in
4 section 414(d) of the Internal Revenue Code of
5 1986) that is a non-Federal qualified institu-
6 tional buyer.

7 (4) ADEQUATE SERVICING PROVISIONS RE-
8 QUIRED.—No loan guarantee may be made under
9 this title for a loan unless the Administrator deter-
10 mines that the lender with respect to such loan is re-
11 sponsible and that adequate servicing provisions
12 have been made for the loans that are the subject
13 of such loan guarantee that are reasonable and pro-
14 tect the financial interest of the United States.

15 **SEC. 110. PROGRAM ADMINISTRATION.**

16 (a) IN GENERAL.—The Administrator shall establish
17 a uniform system to service the direct loans and loan guar-
18 antees made under this title.

19 (b) ASSISTANCE FROM EXPERT FIRMS.—The Ad-
20 ministrator may retain the services of expert firms, includ-
21 ing counsel, in the field of municipal and project finance
22 to assist in the underwriting and servicing of direct loans
23 and loan guarantees made under this title.

24 (c) FEES FOR ADMINISTRATIVE EXPENSES.—

1 (1) IN GENERAL.—In providing assistance
2 under this title, the Administrator may collect fees
3 for administrative expenses, including premiums for
4 loan guarantees, at a level that is sufficient to cover
5 the costs of services of expert firms and all or a por-
6 tion of the costs to the Federal Government of serv-
7 icing the direct loans and loan guarantees made
8 under this title and, as provided in advance in ap-
9 propriations acts, use such amounts to cover such
10 expenses.

11 (2) LEVEL OF FEES.—The Administrator shall
12 set such fees at a level that will minimize the cost
13 to the Federal Government and maximize the assist-
14 ance that can be provided under this title, while pro-
15 viding competitive credit terms to eligible projects, in
16 order to lower borrowing costs and accelerate water
17 infrastructure investment.

18 **SEC. 111. TECHNICAL ASSISTANCE.**

19 The Administrator may use funds appropriated under
20 this title to provide technical assistance to applicants and
21 prospective applicants in constructing financing packages
22 that leverage a mix of public and private funding sources.

1 **SEC. 112. THRESHOLD FOR ASSISTANCE.**

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

5 **SEC. 113. FUNDING.**

6 (a) AUTHORIZATION OF APPROPRIATIONS.—

7 (1) DIRECT LOANS AND LOAN GUARANTEES.—

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

11 (A) [\$ _____] for fiscal year
12 2013;

13 (B) [\$ _____] for fiscal year
14 2014;

15 (C) [\$ _____] for fiscal year
16 2015; and

17 (D) [\$ _____] for fiscal year
18 2016, and each fiscal year thereafter.

19 (2) ADMINISTRATIVE EXPENSES.—There are
20 authorized to be appropriated amounts equal to any
21 fees collected under section 110, and in addition
22 there are authorized to be appropriated for adminis-
23 trative expenses under this title—

24 (A) [\$ _____] for fiscal year
25 2013;

1 (B) [\$_____] for fiscal year
2 2014;

3 (C) [\$_____] for fiscal year
4 2015; and

5 (D) such sums as may be necessary for fis-
6 cal year 2016, and each fiscal year thereafter.

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-
14 rower.

15 **TITLE II—PRIVATE ACTIVITY** 16 **BONDS**

17 **SEC. 201. EXEMPT-FACILITY BONDS FOR SEWAGE AND** 18 **WATER SUPPLY FACILITIES.**

19 (a) BONDS FOR WATER AND SEWAGE FACILITIES
20 EXEMPT FROM VOLUME CAP ON PRIVATE ACTIVITY
21 BONDS.—Paragraph (3) of section 146(g) of the Internal
22 Revenue Code of 1986 is amended by inserting “(4), (5),”
23 after “(2),”.

24 (b) CONFORMING CHANGE.—Paragraphs (2) and
25 (3)(B) of section 146(k) of the Internal Revenue Code of

1 1986 are both amended by striking “(4), (5), (6),” and
2 inserting “(6)”.

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