

TITLE 23 - HIGHWAYS**CHAPTER 6 - INFRASTRUCTURE FINANCE****§ 610. State infrastructure bank program**

(a) **Definitions.**— In this section, the following definitions apply:

(1) **Capital project.**— The term “capital project” has the meaning such term has under section 5302 of title 49.

(2) **Other forms of credit assistance.**— The term “other forms of credit assistance” includes any use of funds in an infrastructure bank—

(A) to provide credit enhancements;

(B) to serve as a capital reserve for bond or debt instrument financing;

(C) to subsidize interest rates;

(D) to insure or guarantee letters of credit and credit instruments against credit risk of loss;

(E) to finance purchase and lease agreements with respect to transit projects;

(F) to provide bond or debt financing instrument security; and

(G) to provide other forms of debt financing and methods of leveraging funds that are approved by the Secretary and that relate to the project with respect to which such assistance is being provided.

(3) **State.**— The term “State” has the meaning such term has under section 401.

(4) **Capitalization.**— The term “capitalization” means the process used for depositing funds as initial capital into a State infrastructure bank to establish the infrastructure bank.

(5) **Cooperative agreement.**— The term “cooperative agreement” means written consent between a State and the Secretary which sets forth the manner in which the infrastructure bank established by the State in accordance with this section will be administered.

(6) **Loan.**— The term “loan” means any form of direct financial assistance from a State infrastructure bank that is required to be repaid over a period of time and that is provided to a project sponsor for all or part of the costs of the project.

(7) **Guarantee.**— The term “guarantee” means a contract entered into by a State infrastructure bank in which the bank agrees to take responsibility for all or a portion of a project sponsor’s financial obligations for a project under specified conditions.

(8) **Initial assistance.**— The term “initial assistance” means the first round of funds that are loaned or used for credit enhancement by a State infrastructure bank for projects eligible for assistance under this section.

(9) **Leverage.**— The term “leverage” means a financial structure used to increase funds in a State infrastructure bank through the issuance of debt instruments.

(10) **Leveraged.**— The term “leveraged”, as used with respect to a State infrastructure bank, means that the bank has total potential liabilities that exceed the capital of the bank.

(b) **Cooperative Agreements.**— Subject to the provisions of this section, the Secretary may enter into cooperative agreements with States for the establishment of State infrastructure banks for making loans and providing other forms of credit assistance to public and private entities carrying out or proposing to carry out projects eligible for assistance under this section.

(c) **Interstate Compacts.**—

(1) **In general.**— Congress grants consent to two or more of the States, entering into a cooperative agreement under subsection (a) with the Secretary for the establishment by such States of a multistate infrastructure bank in accordance with this section, to enter into an interstate compact establishing such bank in accordance with this section.

(2) **Reservation of rights.**— The right to alter, amend, or repeal interstate compacts entered into under this subsection is expressly reserved.

(d) Funding.—

(1) Highway account.— Subject to subsection (j), the Secretary may permit a State entering into a cooperative agreement under this section to establish a State infrastructure bank to deposit into the highway account of the bank not to exceed—

(A) 10 percent of the funds apportioned to the State for each of fiscal years 2005 through 2009 under each of sections 104 (b)(1), 104 (b)(3), 104 (b)(4), and 144; and

(B) 10 percent of the funds allocated to the State for each of such fiscal years under section 105.

(2) Transit account.— Subject to subsection (j), the Secretary may permit a State entering into a cooperative agreement under this section to establish a State infrastructure bank, and any other recipient of Federal assistance under section 5307, 5309, or 5311 of title 49, to deposit into the transit account of the bank not to exceed 10 percent of the funds made available to the State or other recipient in each of fiscal years 2005 through 2009 for capital projects under each of such sections.

(3) Rail account.— Subject to subsection (j), the Secretary may permit a State entering into a cooperative agreement under this section to establish a State infrastructure bank, and any other recipient of Federal assistance under subtitle V of title 49, to deposit into the rail account of the bank funds made available to the State or other recipient in each of fiscal years 2005 through 2009 for capital projects under such subtitle.

(4) Capital grants.—

(A) Highway account.— Federal funds deposited into a highway account of a State infrastructure bank under paragraph (1) shall constitute for purposes of this section a capitalization grant for the highway account of the bank.

(B) Transit account.— Federal funds deposited into a transit account of a State infrastructure bank under paragraph (2) shall constitute for purposes of this section a capitalization grant for the transit account of the bank.

(C) Rail account.— Federal funds deposited into a rail account of a State infrastructure bank under paragraph 3 shall constitute for purposes of this section a capitalization grant for the rail account of the bank.

(5) Special rule for urbanized areas of over 200,000.— Funds in a State infrastructure bank that are attributed to urbanized areas of a State with urbanized populations of over 200,000 under section 133 (d)(3) may be used to provide assistance with respect to a project only if the metropolitan planning organization designated for such area concurs, in writing, with the provision of such assistance.

(6) Discontinuance of funding.— If the Secretary determines that a State is not implementing the State's infrastructure bank in accordance with a cooperative agreement entered into under subsection (b), the Secretary may prohibit the State from contributing additional Federal funds to the bank.

(e) Forms of Assistance From Infrastructure Banks.— An infrastructure bank established under this section may make loans or provide other forms of credit assistance to a public or private entity in an amount equal to all or a part of the cost of carrying out a project eligible for assistance under this section. The amount of any loan or other form of credit assistance provided for the project may be subordinated to any other debt financing for the project. Initial assistance provided with respect to a project from Federal funds deposited into an infrastructure bank under this section may not be made in the form of a grant.

(f) Eligible Projects.— Subject to subsection (e), funds in an infrastructure bank established under this section may be used only to provide assistance for projects eligible for assistance under this title and capital projects defined in section 5302 of title 49, and any other projects relating to surface transportation that the Secretary determines to be appropriate.

(g) Infrastructure Bank Requirements.— In order to establish an infrastructure bank under this section, the State establishing the bank shall—

- (1) deposit in cash, at a minimum, into each account of the bank from non-Federal sources an amount equal to 25 percent of the amount of each capitalization grant made to the State and deposited into such account; except that, if the deposit is into the highway account of the bank and the State has a non-Federal share under section 120 (b) that is less than 25 percent, the percentage to be deposited from non-Federal sources shall be the lower percentage of such grant;
- (2) ensure that the bank maintains on a continuing basis an investment grade rating on its debt, or has a sufficient level of bond or debt financing instrument insurance, to maintain the viability of the bank;
- (3) ensure that investment income derived from funds deposited to an account of the bank are—
 - (A) credited to the account;
 - (B) available for use in providing loans and other forms of credit assistance to projects eligible for assistance from the account; and
 - (C) invested in United States Treasury securities, bank deposits, or such other financing instruments as the Secretary may approve to earn interest to enhance the leveraging of projects assisted by the bank;
- (4) ensure that any loan from the bank will bear interest at or below market interest rates, as determined by the State, to make the project that is the subject of the loan feasible;
- (5) ensure that repayment of any loan from the bank will commence not later than 5 years after the project has been completed or, in the case of a highway project, the facility has opened to traffic, whichever is later;
- (6) ensure that the term for repaying any loan will not exceed 30 years after the date of the first payment on the loan; and
- (7) require the bank to make an annual report to the Secretary on its status no later than September 30 of each year and such other reports as the Secretary may require under guidelines issued to carry out this section.

(h) Applicability of Federal Law.—

(1) **In general.**— The requirements of this title and title 49 that would otherwise apply to funds made available under this title or such title and projects assisted with those funds shall apply to—

- (A) funds made available under this title or such title and contributed to an infrastructure bank established under this section, including the non-Federal contribution required under subsection (g); and

(B) projects assisted by the bank through the use of the funds,

except to the extent that the Secretary determines that any requirement of such title (other than sections 113 and 114 of this title and section 5333 of title 49) is not consistent with the objectives of this section.

(2) **Repayments.**— The requirements of this title and title 49 shall apply to repayments from non-Federal sources to an infrastructure bank from projects assisted by the bank. Such a repayment shall be considered to be Federal funds.

(i) United States not Obligated.— The deposit of Federal funds into an infrastructure bank established under this section shall not be construed as a commitment, guarantee, or obligation on the part of the United States to any third party, nor shall any third party have any right against the United States for payment solely by virtue of the contribution. Any security or debt-financing instrument issued by the infrastructure bank shall expressly state that the security or instrument does not constitute a commitment, guarantee, or obligation of the United States.

(j) Management of Federal Funds.— Sections 3335 and 6503 of title 31 shall not apply to funds deposited into an infrastructure bank under this section.

NB: This unofficial compilation of the U.S. Code is current as of Jan. 8, 2008 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

(k) Program Administration.— For each of fiscal years 2005 through 2009, a State may expend not to exceed 2 percent of the Federal funds contributed to an infrastructure bank established by the State under this section to pay the reasonable costs of administering the bank.

(Added Pub. L. 109–59, title I, § 1602(a), Aug. 10, 2005, 119 Stat. 1243, § 190; renumbered § 610, Pub. L. 109–59, title I, § 1602(d), Aug. 10, 2005, 119 Stat. 1247, as amended Pub. L. 110–244, title I, § 101(f), June 6, 2008, 122 Stat. 1574.)

Amendments

2008—Pub. L. 110–244 amended Pub. L. 109–59, § 1602(d). See 2005 Amendment note below.

2005—Pub. L. 109–59, as amended by Pub. L. 110–244, renumbered section 190 of this title as this section.

Effective Date of 2008 Amendment

Amendment by Pub. L. 110–244 effective as of the date of enactment of Pub. L. 109–59 (Aug. 10, 2005) and to be treated as included in Pub. L. 109–59 as of that date, and provisions of Pub. L. 109–59, as in effect on the day before June 6, 2008, that are amended by Pub. L. 110–244 to be treated as not enacted, see section 121(b) of Pub. L. 110–244, set out as a note under section 101 of this title.