

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”.

○