American Jobs Act of 2011: Proposal to Establish National Infrastructure Bank

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On September 12, 2011, President Obama sent to Congress the "American Jobs Act of 2011." According to material released by the administration, a key component of the package is investment in infrastructure activities aimed at putting workers back on the job while rebuilding and modernizing America. While the proposal includes provisions for separate infrastructure investments in transportation and education programs, it also includes language to establish a national infrastructure bank (NIB) in the form of the American Infrastructure Financing Authority (AIFA). The AIFA is intended to be a United States Government-owned, independent, professionally managed institution whose purpose would be to "facilitate investment in, and long-term financing of, economically viable infrastructure projects of regional or national significance in a manner that both complements existing Federal, State, local, and private funding sources for these projects and introduces a merit-based system for financing such projects, in order to mobilize significant private sector investment, create jobs, and ensure United States competitiveness through an institution that limits the need for ongoing Federal funding."

On October 31, Sen. Amy Klobuchar (MN) introduced S. 1769, the Rebuild America Jobs Act. This legislation was part of an attempt to move components of the President's broader jobs proposal through smaller and more targeted legislative packages. On November 2, the motion to proceed to consideration of S. 1769 in the Senate failed by a 51-49 vote. In the Senate, 60 votes are needed to invoke cloture and proceed with consideration of the legislation.

The following summary highlights key provisions of the proposal to establish the AIFA as proposed by the President and included in the Rebuild America Jobs Act.

Building and Upgrading Infrastructure for Long-Term Development (BUILD) Act
(Subtitle F, Sections 242-260 of the American Jobs Act of 2011)

Key Definitions

- The term *eligible entity* under the proposal is defined as an "individual, corporation, partnership (including a public-private partnership), joint venture, trust, State, or other non-Federal governmental entity, including a political subdivision or any other instrumentality of a State, or a revolving fund."
- Infrastructure projects are defined to include the construction, consolidation, alteration, or repair projects across a group of transportation, water and energy infrastructure subsectors enumerated in the proposal. Under transportation, infrastructure projects that serve to facilitate intermodal transit are also included.

Transportation Subsectors:	Water Subsectors:	Energy Subsectors:
(i) Highway or road (ii) Bridge (iii) Mass transit (iv) Inland waterways (v) Commercial ports (vi) Airports (vii) Air traffic control systems (viii) Passenger rail, including high-speed rail (ix) Freight rail systems	(i) Waste water treatment facility (ii) Storm water management system (iii) Dam (iv) Solid waste disposal facility (v) Drinking water treatment facility (vi) Levee (vii) Open space management system	(i) Pollution reduced energy generation (ii) Transmission and distribution (iii) Storage (iv) Energy efficiency enhancements for buildings, including public and commercial buildings

American Infrastructure Financing Authority (AIFA)

- Establishes AIFA as a wholly owned Government corporation.

- Provides AIFA authority to provide direct loans and loan guarantees to facilitate infrastructure projects that are both economically viable and of regional or national significance.
- The AIFA shall have a Board of Directors consisting of seven voting members appointed by the President and confirmed by the Senate.
  - No more than four shall be from the same political party.
  - Four year terms of service for Board members.
- The Chief Executive Officer (CEO) of AIFA shall be a nonvoting member of the Board.
  - Appointed by the President and confirmed by the Senate.
  - Six year term of service.

Terms and Limitations on Direct Loans and Loan Guarantees

- Excludes from eligibility for funding any project whose use or purpose is private and for which no public benefit is created.
- Assistance cannot be used for the purpose of refinancing existing infrastructure projects.
- Criteria established by the Board of Directors for review of applications must take into consideration:
  - the economic, financial, technical, environmental, and public benefits and costs of each infrastructure project;
    - Calls for the prioritization of infrastructure projects that: contribute to regional or national economic growth; offer value for money to taxpayers; demonstrate a clear and significant public benefit; lead to job creation; and mitigate environmental concerns.
  - the means by which development of the infrastructure project under consideration is being financed;
    - Includes the terms, conditions, and structure of the proposed financing; the credit worthiness and standing of the project sponsors, providers of equity, and cofinanciers; the financial assumptions and projections on which the infrastructure project is based; and whether there is sufficient state or municipal political support for the successful completion of the infrastructure project;
  - the likelihood that the provision of assistance by AIFA will cause such development to proceed more promptly and with lower costs than would be the case without such assistance;
  - the extent to which the provision of assistance by AIFA maximizes the level of private investment in the infrastructure project or supports a public-private partnership, while providing a significant public benefit;
  - the extent to which the provision of assistance by AIFA can mobilize the participation of other financing partners in the infrastructure project;
  - the technical and operational viability of the infrastructure project;
  - the proportion of financial assistance from AIFA;
  - the geographic location of the project in an effort to have geographic diversity of projects funded by AIFA;
  - the size of the project and its impact on the resources of AIFA;
  - the infrastructure sector of the project, in an effort to have projects from more than one sector funded by AIFA; and
  - encourages use of innovative procurement, asset management, or financing to minimize the all-in-life-cycle cost, and improve the cost-effectiveness of a project.
- The Board of Directors or the CEO can establish requirements on the timing and manner in which an application is to be submitted as well as determining what information must be contained in the application.
- Applications for assistance will be reviewed by AIFA on an ongoing basis.
- Funding will be limited to eligible projects with reasonably anticipated costs of at least $100 million, or $25 million in rural areas.
- The loan or loan guarantee could finance no more than 50 percent of the project’s cost.
- Establishes a maximum annual loan and loan guarantee volume.

- $10 billion for the first two fiscal years
- $20 billion for fiscal years 3 through 9
- $50 billion during any fiscal year thereafter.

- Infrastructure projects that receive funding through AIFA must still obtain state and local permits and approvals required for the project.
- A loan or loan guarantee shall be payable in whole or in part from tolls, user fees, or other dedicated revenue sources.
- The base interest rate on a loan would be at least the rate on Treasury debt with a similar maturity.
- The final maturity date of AIFA loans or loan guarantees would be no longer than 35 years.

Funding of AIFA

- Provides for the establishment and collection of fees from eligible funding recipients with respect to loans and loan guarantees.
  - These fees should be sufficient to cover all or a portion of the administrative costs for the operations of AIFA and may be in the form of an application or transaction fee or other form established by the CEO.
  - These fees may be based on the risk premium associated with the loan or loan guarantee, taking into consideration factors such as; the price of United States Treasury obligations of a similar maturity; prevailing market conditions; the ability of the infrastructure project to support the loan or loan guarantee; and the total amount of the loan or loan guarantee.
- Directs the CEO of AIFA to make efforts to minimize the risk and cost to the taxpayer of AIFA activities while supporting the program's objectives, in establishing fees and risk premiums on loans and loan guarantees.
- Authorizes and appropriates $10 billion, which is to remain available until expended.
- Portions of these funds are set aside in the early years for administrative costs.
  - $25 million for FY 2012 and 2013 & $50 million for FY 2014
- No more than five percent will be used to offset subsidy costs associated with rural infrastructure projects.

Extension of Exemption from Alternative Minimum Tax Treatment for Certain Tax-Exempt Bonds

- Excludes from the alternative minimum tax (AMT) interest on tax-exempt private activity bonds for those bonds issued in 2011 or 2012.