

117TH CONGRESS
1ST SESSION

S. 638

To amend title 23, United States Code, to include a payment and performance security requirement for certain infrastructure financing, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 9, 2021

Mr. VAN HOLLEN (for himself and Mr. ROUNDS) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend title 23, United States Code, to include a payment and performance security requirement for certain infrastructure financing, 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.**

4 This Act may be cited as the “Promoting Infrastruc-
5 ture by Protecting Our Subcontractors and Taxpayers
6 Act”.

1 **SEC. 2. FEDERAL REQUIREMENTS FOR TIFIA ELIGIBILITY**
2 **AND PROJECT SELECTION.**

3 (a) IN GENERAL.—Section 602(c) of title 23, United
4 States Code, is amended by adding at the end the fol-
5 lowing:

6 “(3) PAYMENT AND PERFORMANCE SECUR-
7 RITY.—

8 “(A) IN GENERAL.—The Secretary shall
9 ensure that the design and construction of a
10 project carried out with assistance under the
11 TIFIA program shall have appropriate payment
12 and performance security, regardless of whether
13 the obligor is a State, local government, agency
14 or instrumentality of a State or local govern-
15 ment, public authority, or private party.

16 “(B) WRITTEN DETERMINATION.—If pay-
17 ment and performance security is required to be
18 furnished by applicable statute or regulation,
19 the Secretary may accept such payment and
20 performance security requirements applicable to
21 the obligor if the Secretary has made a written
22 determination that the Federal interest with re-
23 spect to Federal funds and other project risk
24 related to design and construction is adequately
25 protected.

1 “(C) NO DETERMINATION OR APPLICABLE
2 REQUIREMENTS.—If a determination under this
3 paragraph has not been made or there are no
4 payment and performance security requirements
5 applicable to the obligor, the security under sec-
6 tion 3131(b) of title 40 shall be required.”.

7 (b) APPLICABILITY.—The amendments made by this
8 Act shall apply with respect to any contract entered into
9 on or after the date of enactment of this Act.

○