

112TH CONGRESS
1ST SESSION

H. R. 2971

To amend titles 23, 45, and 49, United States Code, to encourage the use of private-public partnerships in transportation.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 20, 2011

Mr. HULTGREN introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committees on Oversight and Government Reform and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend titles 23, 45, and 49, United States Code, to encourage the use of private-public partnerships in transportation.

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 “Lincoln Legacy Infra-
5 structure Development Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1) the American Association of State Highway
2 and Transportation Officials estimates current high-
3 way, bridge, public transit, and freight and pas-
4 senger rail funding needs are approximately
5 \$225,000,000,000 to \$340,000,000,000 per year
6 through 2055, while current spending is less than
7 \$90,000,000,000 per year;

8 (2) according to the organization known as
9 Transportation for America, 69,223 bridges, or 11.5
10 percent of all highway bridges in the United States,
11 are considered structurally deficient;

12 (3) according to the Congressional Research
13 Service, for fiscal year 2010, the Highway Trust
14 Fund, the primary funding source for highways and
15 transit, received approximately \$35,000,000,000 in
16 revenue but spent approximately \$50,000,000,000;

17 (4) Congress transferred \$34,500,000,000 in
18 general revenue to the Highway Trust Fund during
19 the period of fiscal years 2008 to 2010 to keep the
20 Highway Trust Fund solvent;

21 (5) Highway Trust Fund outlays during the pe-
22 riod of fiscal years 2011 to 2021 are expected to ex-
23 ceed revenues and interest by approximately
24 \$120,000,000,000;

1 (6) the Congressional Budget Office estimates
2 that the Highway Trust Fund will be unable to meet
3 obligations of the Highway Trust Fund sometime
4 during fiscal year 2012;

5 (7) the United States Chamber of Commerce
6 estimates that further deterioration of transpor-
7 tation networks could result in as much as
8 \$336,000,000,000 in lost growth during the 5 years
9 after the date of enactment of this Act;

10 (8) private-public partnerships are an important
11 tool to help address transportation infrastructure
12 shortfalls;

13 (9) infrastructure experts estimate that there is
14 more than \$400,000,000,000 available for private-
15 sector capital infrastructure investment;

16 (10) according to the Federal Highway Admin-
17 istration, 29 States and 1 United States territory
18 have enacted legislation enabling private-public part-
19 nerships; and

20 (11) State and local governments are uniquely
21 positioned to further develop and use innovative fi-
22 nancing methods for all modes of infrastructure.

23 **SEC. 3. FEDERAL-AID HIGHWAYS.**

24 (a) VENDING MACHINES.—Section 111(b) of title 23,
25 United States Code, is amended—

1 (1) by striking “Notwithstanding” and insert-
2 ing the following:

3 “(1) IN GENERAL.—Notwithstanding”; and

4 (2) by adding at the end the following:

5 “(2) BLIND VENDING FACILITIES.—Notwith-
6 standing any other provision of this Act—

7 “(A) the Secretary shall not impose any
8 surcharge on a State with respect to any blind
9 vending facility established pursuant to para-
10 graph (1); and

11 “(B) the priority accorded licensed blind
12 vendors by paragraph (1) shall not be otherwise
13 limited or diminished as a result of the imple-
14 mentation of the Lincoln Legacy Infrastructure
15 Development Act.”.

16 (b) TOLL ROADS, BRIDGES, TUNNELS, AND FER-
17 RIES.—Section 129(a)(3) of title 23, United States Code,
18 is amended in the last sentence by striking “for any pur-
19 pose for which Federal funds may be obligated by a State
20 under this title” and inserting “, including revenues re-
21 ceived as a result of any agreement entered into by the
22 State for the sale, lease, or concession of a highway,
23 bridge, or tunnel, only for purposes relating to a highway
24 or transit transportation project carried out under this
25 title or title 49”.

1 (c) HOV FACILITIES.—Section 166(a) of title 23,
2 United States Code, is amended by striking paragraph (2)
3 and inserting the following:

4 “(2) OCCUPANCY REQUIREMENT.—

5 “(A) IN GENERAL.—Except as provided in
6 subparagraph (B) and in other provisions of
7 this section, not fewer than 2 occupants per ve-
8 hicle may be required for use of a HOV facility.

9 “(B) CONGESTION.—In any case in which
10 a State determines that a HOV facility is a de-
11 graded facility (as described in subsection
12 (d)(2)(B)) or that the average speed of traffic
13 on a HOV facility slows to less than the min-
14 imum average operating speed (as defined in
15 subsection (d)(2)(A)), the State shall require
16 not fewer than 3 occupants per vehicle for use
17 of the HOV facility.”.

18 (d) INNOVATIVE SURFACE TRANSPORTATION FI-
19 NANCING METHODS.—

20 (1) VALUE PRICING PILOT PROGRAM.—Section
21 1012(b)(1) of the Intermodal Surface Transpor-
22 tation Efficiency Act of 1991 (23 U.S.C. 149 note;
23 105 Stat. 1938) is amended in the second sentence
24 by striking “as many as 15 such State or local gov-

1 ernments or public authorities” and inserting
2 “States, local governments, and public authorities”.

3 (2) INTERSTATE SYSTEM RECONSTRUCTION
4 AND REHABILITATION PILOT PROGRAM.—Section
5 1216(b)(2) of the Transportation Equity Act for the
6 21st Century (23 U.S.C. 129 note; 112 Stat. 212)
7 is amended—

8 (A) in the first sentence, by striking “3”
9 and inserting “10”; and

10 (B) by striking the second sentence.

11 (e) EXPRESS LANES DEMONSTRATION PROGRAM.—
12 Section 1604(b)(2) of the SAFETEA–LU (23 U.S.C. 129
13 note; 119 Stat. 1250) is amended in the matter preceding
14 subparagraph (A)—

15 (1) by striking “15”; and

16 (2) by striking “2005 through 2009” and in-
17 serting “2012 through 2017”.

18 (f) INTERSTATE SYSTEM CONSTRUCTION TOLL
19 PILOT PROGRAM.—Section 1604(c) of the SAFETEA–
20 LU (23 U.S.C. 129 note; 119 Stat. 1253) is amended—

21 (1) by striking paragraph (2);

22 (2) by redesignating paragraphs (9) and (1) as
23 paragraphs (1) and (2), respectively; and

24 (3) in paragraph (8), by striking “the date of
25 enactment of this Act” and inserting “the date of

1 enactment of the Lincoln Legacy Infrastructure De-
2 velopment Act”.

3 **SEC. 4. INFRASTRUCTURE FINANCE.**

4 (a) NONSUBORDINATION.—

5 (1) SECURED LOANS.—Section 603(b) of title
6 23, United States Code, is amended—

7 (A) by striking paragraph (6); and

8 (B) by redesignating paragraphs (7) and
9 (8) as paragraphs (6) and (7), respectively.

10 (2) LINES OF CREDIT.—Section 604(b) of title
11 23, United States Code, is amended—

12 (A) by striking paragraph (8); and

13 (B) by redesignating paragraphs (9) and
14 (10) as paragraphs (8) and (9), respectively.

15 (b) REAUTHORIZATION.—Section 608(a) of title 23,
16 United States Code, is amended—

17 (1) in paragraph (1), by striking
18 “\$122,000,000 for each of fiscal years 2005 through
19 2009” and inserting “\$750,000,000 for each of fis-
20 cal years 2012 through 2017”; and

21 (2) in paragraph (3) by striking “\$2,200,000
22 for each of fiscal years 2005 through 2009” and in-
23 serting “\$7,500,000 for each of fiscal years 2012
24 through 2017”.

1 **SEC. 5. RAILROAD REHABILITATION AND IMPROVEMENT**
2 **FINANCING PROGRAM.**

3 (a) **ELIGIBLE ACTIVITIES.**—Section 822(b)(1) of title
4 45, United States Code, is amended—

5 (1) in subparagraph (B), by striking “or” at
6 the end;

7 (2) in subparagraph (C), by striking the period
8 at the end and inserting a semicolon; and

9 (3) by adding at the end the following:

10 “(D) carry out projects and activities that
11 benefit high-speed rail; or

12 “(E) carry out development phase activi-
13 ties, including planning, feasibility analysis, rev-
14 enue forecasting, environmental review, permit-
15 ting, preliminary engineering and design work,
16 and other preconstruction activities.”.

17 (b) **CREDIT RISK REQUIREMENTS.**—Section
18 822(h)(2) of title 45, United States Code, is amended by
19 inserting “For purposes of making a finding under sub-
20 section (g)(4), the Secretary, through the Administrator
21 of the Federal Railroad Administration, shall consider the
22 net present value of anticipated dedicated revenues or user
23 fees to be collateral offered by the applicant.” after “the
24 project.”.

25 (c) **BIANNUAL REPORT.**—Not later than 6 months
26 after the date of the enactment of this Act, and every 6

1 months thereafter, the Administrator of the Federal Rail-
2 road Administration shall submit a report to Congress
3 that describes—

4 (1) the number of loans pending and issued
5 under section 822 of title 45, United States Code;
6 and

7 (2) the time taken to process each of the loans
8 described in paragraph (1).

9 **SEC. 6. PUBLIC TRANSPORTATION.**

10 (a) DEFINITIONS.—In this section—

11 (1) the term “Administrator” mean the Admin-
12 istrator of the Federal Transit Administration;

13 (2) the term “covered HOT lane facility”
14 means any high occupancy/toll lane facility used by
15 a bus service operated by a public transportation
16 agency, without regard to whether the high occu-
17 pancy/toll lane facility was converted from a high oc-
18 cupancy vehicle facility;

19 (3) the term “eligible project” means a project
20 carried out using funding under section 5307 or
21 5309 of title 49, United States Code;

22 (4) the term “eligible recipient” means a recipi-
23 ent of funding under section 5307 or 5309 of title
24 49, United States Code;

1 (5) the term “experimental program” means
2 the public-private partnership experimental program
3 established under subsection (b); and

4 (6) the term “fixed guideway miles” includes
5 fixed guideway revenue vehicle-miles, fixed guideway
6 route miles, and fixed guideway vehicle passenger-
7 miles.

8 (b) PUBLIC-PRIVATE PARTNERSHIP EXPERIMENTAL
9 PROGRAM.—

10 (1) PROGRAM ESTABLISHED.—The Adminis-
11 trator shall establish a 6-year public-private partner-
12 ship experimental program to encourage eligible re-
13 cipients to carry out tests and experimentation in
14 the project development process that are designed
15 to—

16 (A) attract private investment in covered
17 projects; and

18 (B) increase project management flexibility
19 and innovation, improve efficiency, allow for
20 timely project implementation, and create new
21 revenue streams.

22 (2) IMPLEMENTATION OF PROGRAM.—The ex-
23 perimental program shall—

24 (A) except as provided in paragraph (5),
25 identify any provisions of chapter 53 of title 49,

1 United States Code, and any regulations or
2 practices thereunder, that impede greater use of
3 public-private partnerships and private invest-
4 ment in covered projects; and

5 (B) develop procedures and approaches
6 that—

7 (i) address the impediments described
8 in subparagraph (A), in a manner similar
9 to the Special Experimental Project Num-
10 ber 15 of the Federal Highway Adminis-
11 tration (commonly referred to as “SEP-
12 15”); and

13 (ii) protect the public interest and any
14 public investment in covered projects.

15 (3) REPORT.—Not later than 2 years after the
16 date of enactment of this Act, and every 2 years
17 thereafter until the termination of the experimental
18 program, the Administrator shall submit to Congress
19 a report on the status of the experimental program.

20 (4) RULEMAKING.—Not later than 180 days
21 after the date of enactment of this Act, the Adminis-
22 trator shall issue rules to carry out the experimental
23 program.

1 (5) RULE OF CONSTRUCTION.—Nothing in this
2 subsection may be construed to allow the Adminis-
3 trator to waive any requirement under—

4 (A) section 5333 of title 49, United States
5 Code;

6 (B) the National Environmental Policy Act
7 of 1969 (42 U.S.C. 4321 et seq.); or

8 (C) any other provision of Federal law not
9 described in paragraph (2)(A).

10 (c) DETERMINATION OF NUMBER OF FIXED GUIDE-
11 WAY MILES.—

12 (1) IN GENERAL.—For purposes of appor-
13 tioning funding under sections 5307 and 5309 of
14 title 49, United States Code, the Administrator shall
15 deem covered HOT lane facility miles in an area to
16 be fixed guideway miles attributable to the area.

17 (2) AMOUNT APPORTIONED NOT AFFECTED.—
18 Notwithstanding any other provision of law, the Sec-
19 retary may not apportion an amount for an urban-
20 ized area under section 5307 or 5309 of title 49,
21 United States Code, for fiscal year 2012, or any fis-
22 cal year thereafter, that is less than the amount ap-
23 portioned for the urbanized area under section 5307
24 or 5309, respectively, for fiscal year 2011, if the re-

1 duction in amount is solely attributable to the re-
2 quirement under paragraph (1).

3 (3) AVAILABILITY OF FUNDS.—There shall be
4 available from the Mass Transit Account of the
5 Highway Trust fund for fiscal year 2012, and each
6 fiscal year thereafter, such sums as are necessary to
7 carry out this subsection.

8 **SEC. 7. REMOVAL OF CAP ON EXEMPT FACILITY BONDS**
9 **USED TO FINANCE QUALIFIED HIGHWAY OR**
10 **SURFACE FREIGHT TRANSFER FACILITIES.**

11 (a) IN GENERAL.—Subsection (m) of section 142 of
12 the Internal Revenue Code of 1986 is amended—

13 (1) by striking paragraph (2), and

14 (2) by redesignating paragraphs (3) and (4) as
15 paragraphs (2) and (3).

16 (b) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to bonds issued after the date of
18 the enactment of this Act.

19 **SEC. 8. REDUCTION IN ANNUAL ADJUSTMENTS TO PAY**
20 **SCHEDULES FOR FEDERAL EMPLOYEES FOR**
21 **FISCAL YEARS 2013 THROUGH 2021.**

22 For each of fiscal years 2013 through 2021, section
23 5303(a) of title 5, United States Code, shall be applied
24 by substituting “1 percentage point” for “one-half of 1
25 percentage point”.

1 **SEC. 9. FUNDING.**

2 Of the Federal funds saved for the period of fiscal
3 years 2013 through 2021 as a result of the application
4 of section 9 of this Act and subsections (b) and (c) of
5 section 147 of the Continuing Appropriations Act, 2011
6 (Public Law 111–242; 124 Stat. 2607, 124 Stat. 3518)—

7 (1) such sums as may be necessary to carry out
8 this Act and any amendments made by this Act shall
9 be deposited into the Highway Trust Fund; and

10 (2) the remainder of the funds shall be used for
11 purposes of deficit reduction.

○