

112TH CONGRESS
1ST SESSION

H. R. 3607

To establish a program to improve freight mobility in the United States, to establish the National Freight Mobility Infrastructure Fund, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 8, 2011

Mr. SMITH of Washington (for himself and Mr. DICKS) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on 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 establish a program to improve freight mobility in the United States, to establish the National Freight Mobility Infrastructure Fund, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “National Freight Mobility Infrastructure Act”.

6 (b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

TITLE I—NATIONAL FREIGHT MOBILITY INFRASTRUCTURE
IMPROVEMENT PROGRAM

- Sec. 101. Definitions.
 Sec. 102. Establishment of program.
 Sec. 103. Applications.
 Sec. 104. Competitive project selection and eligibility criteria for grants.
 Sec. 105. Funding agreements.
 Sec. 106. Grant requirements.
 Sec. 107. Annual report.
 Sec. 108. Applicability of title 23.
 Sec. 109. Regulations.

TITLE II—FUNDING

- Sec. 201. Establishment of National Freight Mobility Infrastructure Fund.
 Sec. 202. Freight mobility infrastructure tax.

1 **TITLE I—NATIONAL FREIGHT**
 2 **MOBILITY INFRASTRUCTURE**
 3 **IMPROVEMENT PROGRAM**

4 **SEC. 101. DEFINITIONS.**

5 In this title, the following definitions apply:

6 (1) **DESIGNATED ENTITY.**—The term “des-
 7 ignated entity” means—

8 (A) an entity designated by the chief execu-
 9 tive officer of a State (or the chief executive
 10 officer’s designee) as eligible to apply for and
 11 receive funding under the program established
 12 under section 102;

13 (B) a regional authority if the authority is
 14 responsible under the laws of a State for a cap-
 15 ital project; and

16 (C) a public port.

17 (2) **ELIGIBLE PROJECT COSTS.**—The term “eli-
 18 gible project costs” means the—

1 (A) reimbursement of the costs of develop-
2 ment phase activities, including planning, feasi-
3 bility analysis, revenue forecasting, environ-
4 mental review, preliminary engineering and de-
5 sign work, and other preconstruction activities;
6 and

7 (B) the costs of construction, reconstruc-
8 tion, rehabilitation, and acquisition of real prop-
9 erty (including land related to the project and
10 improvements to land), environmental mitiga-
11 tion, construction contingencies, acquisition of
12 equipment, and operational improvements.

13 (3) ELIGIBLE PROJECT.—The term “eligible
14 project” means any freight mobility infrastructure
15 project that meets the criteria established in section
16 104.

17 (4) SECRETARY.—The term “Secretary” means
18 the Secretary of Transportation.

19 (5) STATE.—The term “State” has the mean-
20 ing given such term in section 101(a) of title 23,
21 United States Code.

22 **SEC. 102. ESTABLISHMENT OF PROGRAM.**

23 (a) IN GENERAL.—The Secretary shall establish a
24 program to provide grants to States and designated enti-

1 ties for projects to improve the efficiency of freight mobil-
2 ity in the United States.

3 (b) OVERHEAD COSTS.—In carrying out the pro-
4 gram, the Secretary shall seek to minimize administrative
5 costs, including overhead, enforcement, and auditing costs.

6 **SEC. 103. APPLICATIONS.**

7 A State or designated entity seeking to receive a
8 grant under this title for an eligible project shall submit
9 to the Secretary an application in such form and in ac-
10 cordance with such requirements as the Secretary may re-
11 quire.

12 **SEC. 104. COMPETITIVE PROJECT SELECTION AND ELIGI-**
13 **BILITY CRITERIA FOR GRANTS.**

14 (a) SELECTION OF PROJECTS.—In carrying out this
15 title, the Secretary shall—

16 (1) award grants on a competitive basis;

17 (2) conduct a national solicitation for applica-
18 tions; and

19 (3) establish criteria for selecting among freight
20 projects of national and regional significance that in-
21 clude, but are not limited to, those which enable—

22 (A) the construction of grade separations
23 at railroad, highway, and railroad-highway
24 junctions;

1 (B) the construction of railroad bypasses
2 and spurs;

3 (C) the construction of railroad side
4 tracks;

5 (D) the expansion of rail and highway tun-
6 nels to accommodate larger, taller, and addi-
7 tional volumes of vehicular and rail freight and
8 container stacks;

9 (E) the addition of railroad track and
10 intermodal facilities at international gateways,
11 land, air, and sea ports, points of congestion,
12 and logistic centers;

13 (F) highway and road construction (includ-
14 ing reinforcement for heavy weight vehicles and
15 heavy traffic volume) at international gateways,
16 land, air, and sea ports, points of congestion,
17 and logistic centers to better accommodate and
18 speed the flow of freight traffic;

19 (G) the construction and improvement of
20 rail and highway bridges that carry a substan-
21 tial amount of freight;

22 (H) the construction of highway ramps
23 that carry a substantial amount of freight; and

1 (I) the construction of highway lanes, in-
2 cluding lanes that segregate freight and pas-
3 senger vehicular traffic.

4 (b) PROJECT REQUIREMENTS.—The Secretary may
5 approve a grant under this title for a project only if the
6 Secretary determines that the project—

7 (1) will improve freight mobility and national
8 freight capacity and efficiency;

9 (2) is cost-effective;

10 (3) is based on the results of preliminary engi-
11 neering;

12 (4) is justified based on extent to which the
13 project—

14 (A) will enhance national and regional
15 economies by allowing for economic develop-
16 ment, growth, and efficiency as measured by—

17 (i) the impact on the Nation's gross
18 domestic product;

19 (ii) increases in new businesses and
20 jobs and retention of existing businesses
21 and jobs;

22 (iii) State and local tax receipts; and

23 (iv) improved safety as measured by
24 reductions in accidents, injuries, and fatali-
25 ties; and

1 (B) seeks to maximize economic opportuni-
2 ties for communities; and

3 (5) is supported by an acceptable degree of non-
4 Federal financial commitments, as determined under
5 subsection (d).

6 (c) SELECTION CONSIDERATIONS.—In selecting a
7 project under this title, the Secretary shall consider the
8 extent to which the project—

9 (1) improves freight mobility and national
10 freight capacity and efficiency;

11 (2) is cost effective;

12 (3) complements and supports the objectives of
13 a strategic freight plan to be developed by the State
14 or designated entity in accordance with such require-
15 ments as the Secretary may prescribe;

16 (4) facilitates freight throughput of higher vol-
17 ume and values;

18 (5) uses operational efficiencies, including intel-
19 ligent transportation systems, that enhance the effi-
20 ciency or effectiveness (or both) of the project;

21 (6) enhances national and regional economies
22 by allowing for economic development, growth, and
23 efficiency;

24 (7) helps maintain or protect the environment;

1 (8) improves safety as measured by reductions
2 in accidents, injuries, and fatalities; and

3 (9) is supported by an acceptable degree of non-
4 Federal financial commitments, as determined under
5 subsection (d).

6 (d) NON-FEDERAL FINANCIAL COMMITMENT.—

7 (1) REQUIREMENTS.—In evaluating a project
8 under this section, the Secretary shall require that—

9 (A) the proposed project plan provides for
10 the availability of contingency amounts that the
11 Secretary determines to be reasonable to cover
12 unanticipated cost increases; and

13 (B) each proposed non-Federal source of
14 capital and operating financing is stable, reli-
15 able, and available within the proposed project
16 timetable.

17 (2) CONSIDERATIONS.—In assessing the sta-
18 bility, reliability, and availability of proposed sources
19 of non-Federal financing under paragraph (1)(B),
20 the Secretary shall consider—

21 (A) existing financial commitments;

22 (B) the degree to which financing sources
23 are dedicated to the purposes proposed;

1 (C) any debt obligation that exists or is
2 proposed by the recipient for the proposed
3 project; and

4 (D) the extent to which the project has a
5 non-Federal financial commitment that exceeds
6 the required non-Federal share of the cost of
7 the project.

8 (e) PROJECT EVALUATION.—

9 (1) IN GENERAL.—A proposed project may ad-
10 vance from preliminary engineering to final design
11 and construction only if the Secretary finds that the
12 project meets the requirements of this section and
13 there is a reasonable likelihood that the project will
14 continue to meet such requirements.

15 (2) EVALUATION AND RATING.—In making
16 such findings, the Secretary shall evaluate and rate
17 the project as “highly recommended”, “rec-
18 ommended”, or “not recommended” based on the re-
19 sults of preliminary engineering, the project selection
20 considerations, and the degree of non-Federal finan-
21 cial commitment, as required under this title. In rat-
22 ing the projects, the Secretary shall provide, in addi-
23 tion to the overall project rating, individual ratings
24 for each of the project selection considerations.

1 (3) PRIORITY.—The Secretary shall award
2 grants first for projects designated as ‘highly rec-
3 ommended’ and next for projects designated as ‘rec-
4 ommended’, in an order based upon the extent to
5 which each project adheres to the project selection
6 considerations applicable to the project under this
7 section.

8 (f) DISTRIBUTION AMONG STATES.—Not to exceed
9 10 percent of the funds made available to carry out this
10 title in a fiscal year may be used to make grants for
11 projects located in a single State.

12 **SEC. 105. FUNDING AGREEMENTS.**

13 (a) FULL FUNDING GRANT AGREEMENTS.—

14 (1) IN GENERAL.—A project financed under
15 this title shall be carried out through a full funding
16 grant agreement. The Secretary shall enter into a
17 full funding grant agreement based on the evalua-
18 tions and ratings required under section 104(e).

19 (2) TERMS.—If the Secretary makes a full
20 funding grant agreement with an applicant, the
21 agreement shall—

22 (A) establish the terms of participation by
23 the United States Government in a project
24 under this section;

1 (B) establish the maximum amount of
2 Government financial assistance for the project;

3 (C) cover the period of time for completing
4 the project, including a period extending beyond
5 the period of an authorization; and

6 (D) make timely and efficient management
7 of the project easier according to the laws of
8 the United States.

9 (3) AGREEMENT.—An agreement under this
10 subsection obligates an amount of available budget
11 authority specified in law and may include a com-
12 mitment, contingent on amounts to be specified in
13 law in advance for commitments under this sub-
14 section, to obligate an additional amount from fu-
15 ture available budget authority specified in law. The
16 agreement shall state that the contingent commit-
17 ment is not an obligation of the Government. Inter-
18 est and other financing costs of efficiently carrying
19 out a part of the project within a reasonable time
20 are a cost of carrying out the project under a full
21 funding grant agreement, except that eligible costs
22 may not be more than the cost of the most favorable
23 financing terms reasonably available for the project
24 at the time of borrowing. The applicant shall certify,
25 in a way satisfactory to the Secretary, that the ap-

1 plicant has shown reasonable diligence in seeking the
2 most favorable financing terms.

3 (b) AMOUNTS.—The total estimated amount of fu-
4 ture obligations of the Government and contingent com-
5 mitments to incur obligations covered by all full funding
6 grant agreements may be not more than the greater of
7 the amount authorized to carry out this section or an
8 amount equivalent to the last 2 fiscal years of funding au-
9 thorized to carry out this section less an amount the Sec-
10 retary reasonably estimates is necessary for grants under
11 this section not covered by a full funding grant agreement.
12 The total amount covered by full funding grant agree-
13 ments may be not more than a limitation specified in law.

14 **SEC. 106. GRANT REQUIREMENTS.**

15 (a) HIGHWAY CONSTRUCTION PROJECTS.—A grant
16 for the construction of a highway under this title shall be
17 subject to all of the requirements of title 23, United States
18 Code.

19 (b) OTHER TERMS AND CONDITIONS.—The Sec-
20 retary shall require that all grants under this title be sub-
21 ject to all terms, conditions, and requirements that the
22 Secretary decides are necessary or appropriate for pur-
23 poses of this section, including requirements for the dis-
24 position of net increases in the value of real property re-
25 sulting from the project assisted under this title.

1 (c) GOVERNMENT'S SHARE OF PROJECT COST.—
2 Based on engineering studies, studies of economic feasi-
3 bility, and information on the expected use of equipment
4 or facilities, the Secretary shall estimate the cost of a
5 project receiving assistance under this title. A grant for
6 the project shall not exceed 80 percent of the project cost.

7 **SEC. 107. ANNUAL REPORT.**

8 Not later than the first Monday in February the year
9 after the date of enactment of this Act and each year
10 thereafter, the Secretary shall submit to the Committees
11 on Transportation and Infrastructure and Appropriations
12 of the House of Representatives and the Committees on
13 Commerce, Science, and Transportation and Appropria-
14 tions of the Senate a report that includes—

15 (1) a proposal on the allocation of amounts to
16 be made available to finance grants under this sec-
17 tion;

18 (2) evaluations and ratings, as required under
19 section 104(e); and

20 (3) recommendations of projects for funding
21 based on the evaluations and ratings and on existing
22 commitments and anticipated funding levels for the
23 next 3 fiscal years and for the next 10 fiscal years
24 based on information currently available to the Sec-
25 retary.

1 **SEC. 108. APPLICABILITY OF TITLE 23.**

2 Funds made available to carry out this title shall be
 3 available for obligation in the same manner as if such
 4 funds were apportioned under chapter 1 of title 23, United
 5 States Code, except that such funds shall not be transfer-
 6 able and shall remain available until expended and the
 7 Federal share of the cost of a project under this section
 8 shall be as provided in this title.

9 **SEC. 109. REGULATIONS.**

10 Not later than 180 days after the date of enactment
 11 of this Act, the Secretary of Transportation shall issue
 12 regulations to carry out this title.

13 **TITLE II—FUNDING**

14 **SEC. 201. ESTABLISHMENT OF NATIONAL FREIGHT MOBIL-**
 15 **ITY INFRASTRUCTURE FUND.**

16 (a) ESTABLISHMENT OF THE FUND.—There is estab-
 17 lished in the Treasury a separate account which shall be
 18 known as the “National Freight Mobility Infrastructure
 19 Fund” (in this section referred to as the “Fund”).

20 (b) DEPOSITS INTO THE FUND.—The account shall
 21 consist of amounts transferred to the Fund under section
 22 4286 of the Internal Revenue Code of 1986.

23 (c) EXPENDITURES FROM FUND.—

24 (1) IN GENERAL.—Amounts in the account
 25 shall be made available to the Secretary of Trans-
 26 portation for each of the fiscal years 2011 to 2036,

1 without further appropriation, for making expendi-
 2 tures to meet the obligations of the United States to
 3 carry out this Act.

4 (2) ADMINISTRATIVE EXPENSES.—Not more
 5 than 4 percent of the amounts made available to the
 6 Secretary under this section for a fiscal year may be
 7 used for administrative expenses of the Secretary in
 8 carrying out this Act.

9 **SEC. 202. FREIGHT MOBILITY INFRASTRUCTURE TAX.**

10 (a) IMPOSITION OF TAX.—Chapter 33 of the Internal
 11 Revenue Code of 1986 is amended by adding after sub-
 12 chapter C the following new subchapter:

13 **“Subchapter D—Transportation by Freight**
 14 **Rail and Highway**

“Sec. 4286. Imposition of tax.

15 **“SEC. 4286. IMPOSITION OF TAX.**

16 “(a) IN GENERAL.—There is hereby imposed upon
 17 taxable ground transportation of property within the
 18 United States a tax equal to 1 percent of the fair market
 19 value of such transportation.

20 “(b) FAIR MARKET VALUE OF TAXABLE GROUND
 21 TRANSPORTATION.—

22 “(1) TRANSPORTATION BY UNRELATED PER-
 23 SONS.—In the case of amounts paid to an unrelated
 24 person engaged in the business of transporting prop-

1 erty by freight rail or highway for hire, the fair mar-
2 ket value shall be the amount paid for transporting
3 such property.

4 “(2) TRANSPORTATION BY RELATED PER-
5 SONS.—In the case of transportation of property by
6 the taxpayer or a person related to the taxpayer, the
7 fair market value of such transportation shall be the
8 amount which would be paid for transporting such
9 property if such property were transported by an un-
10 related person, determined on an arms’ length basis.

11 “(c) BY WHOM PAID.—

12 “(1) IN GENERAL.—Except as provided by
13 paragraph (2), the tax imposed by subsection (a)
14 shall be paid—

15 “(A) by the person making the payment
16 subject to tax; or

17 “(B) in the case of transportation by a re-
18 lated person, by the person for whom such
19 transportation is made.

20 “(2) PAYMENTS MADE OUTSIDE THE UNITED
21 STATES.—If a payment subject to tax under sub-
22 section (a) is made outside the United States and
23 the person making such payment does not pay such
24 tax, such tax shall be paid by the person to whom
25 the property is delivered in the United States after

1 the final segment of transportation in the United
2 States.

3 “(3) DETERMINATIONS OF AMOUNTS PAID IN
4 CERTAIN CASES.—For purposes of this section, rules
5 similar to the rules of section 4271(c) shall apply.

6 “(d) TRANSFER OF AMOUNTS EQUIVALENT TO TAX
7 TO NATIONAL FREIGHT MOBILITY INFRASTRUCTURE
8 FUND.—There are hereby appropriated to the National
9 Freight Mobility Infrastructure Fund amounts equivalent
10 to the taxes received in the Treasury under subsection (a).

11 “(e) DEFINITIONS.—For purposes of this part—

12 “(1) TAXABLE GROUND TRANSPORTATION.—
13 The term ‘taxable ground transportation’ means
14 transportation of property by—

15 “(A) freight rail, or

16 “(B) commercial motor vehicle (as defined
17 in section 31101(1) of title 49, United States
18 Code) for a distance of more than 50 miles.

19 “(2) RELATED PERSON.—A person (hereinafter
20 in this paragraph referred to as the ‘related person’)
21 is related to any person if the related person bears
22 a relationship to such person specified in section
23 267(b) or 707(b)(1), or the related person and such
24 person are engaged in trades or businesses under
25 common control (within the meaning of subsections

1 (a) and (b) of section 52). For purposes of the pre-
2 ceding sentence, in applying section 267(b) or
3 707(b)(1), ‘10 percent’ shall be substituted for ‘50
4 percent’.

5 “(f) EXEMPTION FOR UNITED STATES AND POSSES-
6 SIONS AND STATE AND LOCAL GOVERNMENTS.—Sub-
7 section (a) shall not apply to the transportation of prop-
8 erty purchased for the exclusive use of the United States,
9 or any State or political subdivision thereof. For purposes
10 of the preceding sentence, the term ‘State’ includes the
11 District of Columbia.”.

12 (b) CREDITS OR REFUNDS TO PERSONS WHO COL-
13 LECTED CERTAIN TAXES.—Section 6415 of such Code is
14 amended by striking “or 4271” each place it appears and
15 inserting “4271, or 4286”.

16 (c) REGULATIONS.—Not later than 180 days after
17 the date of the enactment of this Act, the Secretary of
18 the Treasury shall issue regulations to carry out the
19 amendments made by this section.

20 (d) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to transportation beginning on or
22 after the last day of the 180-day period beginning on the
23 date of the issuance of regulations under subsection (c).

○