

112th CONGRESS

1st Session

**S. 371**

To improve the efficiency, operation, and security of the national transportation system to move freight by leveraging investments and promoting partnerships that advance interstate and foreign commerce, and for other purposes.

**IN THE SENATE OF THE UNITED STATES**

**February 16, 2011**

Mr. LAUTENBERG (for himself, Mrs. MURRAY, and Ms. CANTWELL) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science and Transportation

**A BILL**

To improve the efficiency, operation, and security of the national transportation system to move freight by leveraging investments and promoting partnerships that advance interstate and foreign commerce, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE- This Act may be cited as the `Focusing Resources, Economic Investment, and Guidance to Help Transportation Act of 2011'.

(b) Table of Contents- The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

**TITLE I--FREIGHT TRANSPORTATION POLICY AND STRATEGIC DEVELOPMENT.**

Sec. 101. Federal Government role in freight transportation.

Sec. 102. Office of Freight Planning and Development.

Sec. 103. Transportation investment planning tools.

**TITLE II--FREIGHT TRANSPORTATION INVESTMENT.**

Sec. 201. National freight infrastructure investment grants.

## **TITLE I--FREIGHT TRANSPORTATION POLICY AND STRATEGIC DEVELOPMENT**

### **SEC. 101. FEDERAL GOVERNMENT ROLE IN FREIGHT TRANSPORTATION.**

(a) IN GENERAL- Subchapter I of chapter 3 of title 49, United States Code, is amended by adding at the end the following:

#### **` 310. National freight transportation policy**

` (a) NATIONAL FREIGHT TRANSPORTATION POLICY- It is the policy of the United States to improve the efficiency, operation, and security of the national transportation system to move freight by leveraging investments and promoting partnerships that advance interstate and foreign commerce, promote economic competitiveness and job creation, improve the safe and efficient mobility of goods, and protect the public health and the environment.

` (b) OBJECTIVES- The objectives of the policy are--

` (1) to target investment in freight transportation projects that strengthen the economic competitiveness of the United States with a focus on domestic industries and businesses and the creation of high-value jobs;

` (2) to promote and advance energy conservation and the environmental sustainability of freight movements;

` (3) to facilitate and advance the safety and health of the public, including communities adjacent to freight movements;

` (4) to provide for systematic and balanced investment to improve the overall performance and reliability of the national transportation system to move freight, including ensuring trade facilitation and transportation system improvements are mutually supportive;

` (5) to promote partnerships between Federal, State, and local governments, the private sector, and other transportation stakeholders to leverage investments in freight transportation projects; and

` (6) to encourage adoption of operational policies, such as intelligent transportation systems, to improve the efficiency of freight-related transportation movements and infrastructure.

` (c) GOALS-

` (1) IN GENERAL- The goals of the policy are--

` (A) to reduce transportation infrastructure-related delays of goods and commodities entering into and out of international points of entry on an annual basis;

` (B) to increase travel time reliability on major freight corridors that connect major population centers to freight generators and international gateways on an annual basis;

` (C) to reduce by 10 percent the number of freight transportation-related fatalities by 2015;

` (D) to reduce national freight transportation-related carbon dioxide levels by 40 percent by 2030; and

` (E) to reduce freight transportation-related air, water, and noise pollution and impacts on ecosystems and communities on an annual basis.

` (2) BASELINES- Not later than 2 years after the date of enactment of the Focusing Resources, Economic Investment, and Guidance to Help Transportation Act of 2011, the Secretary shall develop baselines for the goals and shall determine appropriate methods of data collection to measure the attainment of the goals, utilizing the tools and data developed under section 103 of that Act.

` (3) AUTHORITY- Notwithstanding any other provision of law in effect as of the date of enactment of the Focusing Resources, Economic Investment, and Guidance to Help Transportation Act of 2011, the Secretary may, through a process of public notice and comment and with reasonable prior notice to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure preceding any significant change, consistent with the public interest, amend the goals under this subsection or develop additional goals to effectively meet the policy and objectives set forth in this section.'.

(b) CONFORMING AMENDMENTS- The table of contents for chapter 3 of title 49, United States Code, is amended by inserting after the item relating to section 309 the following:

` 310. National freight transportation policy'.

## **SEC. 102. OFFICE OF FREIGHT PLANNING AND DEVELOPMENT.**

(a) IN GENERAL- Section 102 of title 49, United States Code, is amended--

(1) by redesignating subsection (h) as subsection (i); and

(2) by inserting after subsection (g) the following:

` (h) Office of Freight Planning and Development-

` (1) ESTABLISHMENT- There is established within the Office of the Secretary an Office of Freight Planning and Development. The Office shall--

` (A) coordinate investment of Federal funding to improve the efficiency of the national transportation system to move freight consistent with the policy, objectives, and goals of section 310;

` (B) facilitate communication among government, public, and private freight

transportation stakeholders;

` (C) support the Secretary in the development of the National Freight Transportation Strategic Plan; and

` (D) carry out other duties, as prescribed by the Secretary.

` (2) ORGANIZATION- The head of the Office shall be the Assistant Secretary of Freight Planning and Development.

` (3) NATIONAL FREIGHT TRANSPORTATION STRATEGIC PLAN-

` (A) DEVELOPMENT- Not later than 2 years after the date of enactment of the Focusing Resources, Economic Investment, and Guidance to Help Transportation Act of 2011, the Secretary shall develop a long-term National Freight Transportation Strategic Plan to guide planning and investments in the national transportation system to move freight to achieve the policy, objectives, and goals set forth in section 310.

` (B) CONTENTS- The Plan shall include--

` (i) an assessment of the current national transportation system to move freight and the system's ability to achieve the policy, objectives, and goals set forth in section 310;

` (ii) an analysis of emerging and long-term projected trends in economic and national trade policies, public health, and environmental conditions that will impact the performance, needs, and uses of the national transportation system to move freight;

` (iii) a description of the major challenges to effectively meeting the policy, objectives, and goals set forth in section 310 and a plan to address such challenges;

` (iv) a proposed investment plan to develop priorities for Federal investments to implement the policy, objectives, and goals in section 310 and a strategy to develop the coalitions, partnerships, and other collaborative financing efforts necessary to ensure stable, reliable funding and completion of freight corridors and projects;

` (v) guidelines to encourage the appropriate balance of means to finance the national transportation system to move freight to implement the Plan and the investment plan proposed under clause (iv); and

` (vi) a list of priority freight corridors and gateways to be improved and developed to meet the policy, objectives, and goals set forth in section 310.

` (C) PLAN DEVELOPMENT- In developing the Plan, the Secretary shall--

` (i) consult with appropriate Federal agencies, State, local, and tribal governments, public and private transportation stakeholders, organizations representing transportation employees, appropriate foreign governments, and other interested parties;

- ` (ii) consider ongoing Federal, State and corridor-wide transportation plans;

- ` (iii) provide for public notice and comment, including public hearings; and

- ` (iv) as appropriate, establish advisory committees to assist with developing the Plan.

` (D) SUBMISSION AND PUBLICATION- Upon completion of the Plan, the Secretary shall--

- ` (i) post it on the Department of Transportation's public Web site; and

- ` (ii) submit it to the Senate Committee on Commerce, Science, and Transportation, the Senate Committee on Appropriations, the House of Representatives Committee on Transportation and Infrastructure, and the House of Representatives Committee on Appropriations.

` (E) IMPLEMENTATION- Notwithstanding any other provision of law in effect on the date of enactment of the Focusing Resources, Economic Investment, and Guidance to Help Transportation Act of 2011, the Secretary shall--

- ` (i) implement the Plan consistent with sections 302, 5503, 10101, and 13101 of this title and section 101 of title 23 to the extent that such sections do not conflict with the policy, objectives, and goals established by section 310;

- ` (ii) review and revise as necessary all relevant freight transportation planning requirements to ensure that such requirements require that regional, State, and local surface transportation planning efforts funded with Federal funds are consistent with the policy, objectives, and goals established by section 310; and

- ` (iii) require recipients of Federal non-competitively awarded transportation funds and competitively awarded freight-related grant funds to submit a comprehensive annual report on the use of such funds used for freight projects, including a description of--

- ` (I) which projects and priorities were funded with such funds;

- ` (II) the rationale and method employed for apportioning such funds to the projects and priorities; and

- ` (III) how the obligation of such funds is consistent with or advances the policy and objectives established by section 310 and the Plan.

` (F) PROGRESS REPORTS- The Secretary shall submit biennial progress reports on the implementation of the Plan beginning 2 years after the date on which the Secretary posts the completed Plan on the Department's Web site. The progress reports shall--

- ` (i) describe progress made toward fully implementing the Plan and

achieving the policy, objectives, and goals established under section 310;

` (ii) describe challenges and obstacles to full implementation;

` (iii) describe updates to the Plan necessary to reflect changed circumstances or new developments; and

` (iv) make policy and legislative recommendations the Secretary believes are necessary and appropriate to fully implement the Plan.

` (G) DATA- The Secretary may conduct studies, gather information, and require the production of data necessary to develop or update the Plan.

` (H) FUNDING- There are authorized to be appropriated to the Secretary of Transportation \$3,000,000 to implement this subsection.'.

(b) CONFORMING AMENDMENTS-

(1) Section 102(e) of title 49, United States Code, is amended by striking ` 4' and inserting ` 5'.

(2) Section 5315 of title 5, United States Code, is amended by striking `(4)' in the item relating to Assistant Secretaries of Transportation and inserting `(5)'.

## **SEC. 103. TRANSPORTATION INVESTMENT DATA AND PLANNING TOOLS.**

(a) In General- Not later than one year after the date of enactment of this Act, the Secretary shall--

(1) develop new tools or improve existing tools to support an outcome-oriented, performance-based approach to evaluate proposed freight-related and other transportation projects. These new or improved tools shall include--

(A) a systematic cost-benefit analysis;

(B) an evaluation of external effects on congestion, pollution, the environment, and the public health;

(C) a valuation of modal alternatives; and

(D) other elements to assist in effective transportation planning; and

(2) facilitate the collection of transportation-related data to support a broad range of evaluation methods and techniques such as demand forecasts, modal diversion forecasts, estimates of the effect of proposed investments on congestion, pollution, public health, and other factors, to assist in making transportation investment decisions. At a minimum, the Secretary, in consultation with other relevant Federal agencies, shall consider any improvements to the Commodity Flow Survey that reduce identified freight data gaps and deficiencies and help evaluate forecasts of transportation demand.

(b) Consultation- To the extent practicable, the Secretary shall consult with Federal,

State, and local transportation planners to develop, improve, and implement the tools and collect the data in subsection (a).

## **TITLE II--FREIGHT TRANSPORTATION INVESTMENT**

### **SEC. 201. NATIONAL FREIGHT INFRASTRUCTURE INVESTMENT GRANTS.**

(a) ESTABLISHMENT OF PROGRAM- Chapter 55 of title 49, United States Code, is amended by adding at the end the following:

#### ***` SUBCHAPTER III. FINANCIAL ASSISTANCE***

##### **` 5581. National freight infrastructure investment grants**

` (a) ESTABLISHMENT OF PROGRAM- The Secretary of Transportation shall establish a competitive grant program to provide financial assistance for capital investments that improve the efficiency of the national transportation system to move freight.

` (b) ELIGIBLE PROJECTS- An applicant is eligible for a grant under this section for--

` (1) a port development or improvement project;

` (2) a multimodal terminal facility project;

` (3) a land port of entry project;

` (4) a freight rail improvement or capacity expansion project;

` (5) an intelligent transportation system project primarily for freight benefit that reduces congestion or improves safety;

` (6) a project that improves access to a port or terminal facility; or

` (7) planning, preparation, or design of any project described in paragraph (1), (2), (3), (4), (5), or (6).

` (c) PROJECT SELECTION CRITERIA- In determining whether to award a grant to an eligible applicant under this section, the Secretary shall consider the extent to which the project--

` (1) supports the objectives of the National Freight Transportation Strategic Plan developed under section 102(h)(3);

` (2) leverages Federal investment by encouraging non-Federal contributions to the project, including contributions from public-private partnerships;

` (3) improves the mobility of goods and commodities;

` (4) incorporates new and innovative technologies, including freight-related intelligent transportation systems;

` (5) improves energy efficiency or reduces greenhouse gas emissions;

` (6) helps maintain or protect the environment, including reducing air and water pollution;

` (7) reduces congestion;

` (8) improves the condition of the freight infrastructure, including bringing it into a state of good repair;

` (9) improves safety, including reducing transportation accidents, injuries, and fatalities;

` (10) demonstrates that the proposed project cannot be readily and efficiently realized without Federal support and participation; and

` (11) enhances national or regional economic development, growth, and competitiveness.

` (d) PRIORITY- The Secretary shall give priority to projects that have the highest system performance improvement relative to their benefit-cost analysis, as measured by the tools developed under section 103 of the Focusing Resources, Economic Investment, and Guidance to Help Transportation Act of 2011.

` (e) LETTERS OF INTENT-

` (1) The Secretary may issue a letter of intent to an applicant announcing an intention to obligate, for a major capital project under this subsection, an amount from future available budget authority specified in law that is not more than the amount stipulated as the financial participation of the Secretary in the project.

` (2) At least 30 days before issuing a letter under paragraph (1) of this subsection, the Secretary shall notify in writing the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure of the proposed letter or agreement. The Secretary shall include with the notification a copy of the proposed letter or agreement, the criteria used under subsection (c) for selecting the project for a grant award, and a description of how the project meets such criteria.

` (3) An obligation or administrative commitment may be made only when amounts are made available. The letter of intent shall state that the contingent commitment is not an obligation of the Federal Government, and is subject to the availability of funds under Federal law and to Federal laws in force or enacted after the date of the contingent commitment.

` (f) FEDERAL SHARE OF NET PROJECT COST-

` (1) Based on engineering studies, studies of economic feasibility, and information on the expected use of equipment or facilities, the Secretary shall estimate the net project cost.

` (2) The Federal share of a grant for the project shall not exceed 80 percent of the project net capital cost.



` (3) The Secretary shall give priority in allocating future obligations and contingent commitments to incur obligations to grant requests seeking a lower Federal share of the project net capital cost.

` (g) COOPERATIVE AGREEMENTS-

` (1) IN GENERAL- An applicant may enter into an agreement with any public, private, or nonprofit entity to cooperatively implement any project funded with a grant under this subchapter.

` (2) FORMS OF PARTICIPATION- Participation by an entity under paragraph (1) may consist of--

` (A) ownership or operation of any land, facility, vehicle, or other physical asset associated with the project;

` (B) cost-sharing of any project expense or non-Federal share of the project cost, including in kind contributions;

` (C) carrying out administration, construction management, project management, project operation, or any other management or operational duty associated with the project; and

` (D) any other form of participation approved by the Secretary.

` (h) OVERSIGHT PROGRAM-

` (1) ESTABLISHMENT-

` (A) IN GENERAL- The Secretary shall establish an oversight program to monitor the effective and efficient use of funds authorized to carry out this section.

` (B) MINIMUM REQUIREMENT- At a minimum, the program shall be responsive to all areas relating to financial integrity and project delivery.

` (2) FINANCIAL INTEGRITY-

` (A) FINANCIAL MANAGEMENT SYSTEMS- The Secretary shall perform annual reviews that address elements of the applicant's financial management systems that affect projects approved under subsection (a).

` (B) PROJECT COSTS- The Secretary shall develop minimum standards for estimating project costs and shall periodically evaluate the practices of applicants for estimating project costs, awarding contracts, and reducing project costs.

` (3) PROJECT DELIVERY- The Secretary shall perform annual reviews that address elements of the project delivery system of an applicant, which elements include one or more activities that are involved in the life cycle of a project from conception to completion of the project.

` (4) RESPONSIBILITY OF THE APPLICANTS-

` (A) IN GENERAL- Each applicant shall submit to the Secretary for approval such plans, specifications, and estimates for each proposed project as the Secretary may require.

` (B) APPLICANT SUBRECIPIENTS- The applicant shall be responsible for determining that a subrecipient of Federal funds under this section has--

` (i) adequate project delivery systems for projects approved under this section; and

` (ii) sufficient accounting controls to properly manage such Federal funds.

` (C) PERIODIC REVIEW- The Secretary shall periodically review the monitoring of subrecipients by the applicant.

` (5) SPECIFIC OVERSIGHT RESPONSIBILITIES- Nothing in this section shall affect or discharge any oversight responsibility of the Secretary specifically provided for under this title or other Federal law.

` (i) MAJOR PROJECTS-

` (1) IN GENERAL- A recipient of a grant for a project under this section with an estimated total cost of \$500,000,000 or more, and a recipient for such other projects as may be identified by the Secretary, shall submit to the Secretary for each project--

` (A) a project management plan; and

` (B) an annual financial plan.

` (2) PROJECT MANAGEMENT PLAN- A project management plan shall document--

` (A) the procedures and processes that are in effect to provide timely information to the project decisionmakers to effectively manage the scope, costs, schedules, quality of, and the Federal requirements applicable to, the project; and

` (B) the role of the agency leadership and management team in the delivery of the project.

` (3) FINANCIAL PLAN- A financial plan shall--

` (A) be based on detailed estimates of the cost to complete the project; and

` (B) provide for the annual submission of updates to the Secretary that are based on reasonable assumptions, as determined by the Secretary, of future increases in the cost to complete the project.

` (j) OTHER PROJECTS- A recipient of Federal financial assistance for a project under this title with an estimated total cost of \$100,000,000 or more that is not covered by subsection (i) shall prepare an annual financial plan. Annual financial plans prepared under this subsection shall be made available to the Secretary for review upon the request of the Secretary.

`(k) OTHER TERMS AND CONDITIONS- The Secretary shall determine what additional grant terms and conditions are necessary and appropriate to meet the requirements of this section.

`(l) REGULATIONS- Within 1 year after the date of enactment of the Focusing Resources, Economic Investment, and Guidance to Help Transportation Act of 2011, the Secretary shall prescribe regulations to implement this section.

`(m) APPLICANT DEFINED- In this subchapter, the term `applicant' includes a State, a political subdivision of a State, government-sponsored authorities and corporations, and the District of Columbia.

`(n) SECRETARIAL OVERSIGHT-

`(1) The Secretary may use no more than 1 percent of amounts made available in a fiscal year for capital projects under this subchapter to enter into contracts to oversee the construction of such projects.

`(2) The Secretary may use amounts available under paragraph (1) of this subsection to make contracts for safety, procurement, management, and financial compliance reviews and audits of a recipient of amounts under paragraph (1).

`(3) The Federal Government shall pay the entire cost of carrying out a contract under this subsection.'

(b) Conforming Amendment- The table of contents for chapter 55 of title 49, United States Code, is amended by adding at the end the following:

## **`SUBCHAPTER III. FINANCIAL ASSISTANCE**

`5581. National freight infrastructure investment grants'.

## **SEC. 202. PORT INFRASTRUCTURE DEVELOPMENT INITIATIVE.**

Section 50302(c)(3)(C) of title 46, United States Code, is amended to read as follows:

`(C) TRANSFERS- Amounts appropriated or otherwise made available for any fiscal year for a marine facility or intermodal facility that includes maritime transportation may be transferred, at the option of the recipient of such amounts, to the Fund and administered by the Administrator as a component of a project under the program.'

END

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