

112TH CONGRESS
1ST SESSION

H. R. 1338

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 HOUSE OF REPRESENTATIVES

APRIL 1, 2011

Mr. SIRES (for himself, Mr. COHEN, Mr. BLUMENAUER, and Mr. SMITH of Washington) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

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.

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 “Focusing Resources, Economic Investment, and Guid-
6 ance To Help Transportation Act of 2011”.

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 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 data and planning tools.

TITLE II—FREIGHT TRANSPORTATION INVESTMENT

Sec. 201. National freight infrastructure investment grants.

Sec. 202. Port infrastructure development initiative.

3 **TITLE I—FREIGHT TRANSPORTATION**
 4 **POLICY AND STRATEGIC**
 5 **DEVELOPMENT**

6 **SEC. 101. FEDERAL GOVERNMENT ROLE IN FREIGHT**
 7 **TRANSPORTATION.**

8 (a) IN GENERAL.—Subchapter I of chapter 3 of title
 9 49, United States Code, is amended by adding at the end
 10 the following:

11 **“§ 310. National freight transportation policy**

12 “(a) NATIONAL FREIGHT TRANSPORTATION POL-
 13 ICY.—It is the policy of the United States to improve the
 14 efficiency, operation, and security of the national trans-
 15 portation system to move freight by leveraging invest-
 16 ments and promoting partnerships that advance interstate
 17 and foreign commerce, promote economic competitiveness
 18 and job creation, improve the safe and efficient mobility
 19 of goods, and protect the public health and the environ-
 20 ment.

1 “(b) OBJECTIVES.—The objectives of the policy
2 are—

3 “(1) to target investment in freight transpor-
4 tation projects that strengthen the economic com-
5 petitiveness of the United States with a focus on do-
6 mestic industries and businesses and the creation of
7 high-value jobs;

8 “(2) to promote and advance energy conserva-
9 tion and the environmental sustainability of freight
10 movements;

11 “(3) to facilitate and advance the safety and
12 health of the public, including communities adjacent
13 to freight movements;

14 “(4) to provide for systematic and balanced in-
15 vestment to improve the overall performance and re-
16 liability of the national transportation system to
17 move freight, including ensuring trade facilitation
18 and transportation system improvements are mutu-
19 ally supportive;

20 “(5) to promote partnerships between Federal,
21 State, and local governments, the private sector, and
22 other transportation stakeholders to leverage invest-
23 ments in freight transportation projects; and

24 “(6) to encourage adoption of operational poli-
25 cies, such as intelligent transportation systems, to

1 improve the efficiency of freight-related transpor-
2 tation movements and infrastructure.

3 “(c) GOALS.—

4 “(1) IN GENERAL.—The goals of the policy
5 are—

6 “(A) to reduce congestion and transpor-
7 tation infrastructure-related delays of goods
8 and commodities entering into and out of inter-
9 national points of entry on an annual basis;

10 “(B) to increase travel time reliability on
11 major freight corridors that connect major pop-
12 ulation centers to freight generators and inter-
13 national gateways on an annual basis;

14 “(C) to reduce by 10 percent the number
15 of freight transportation-related fatalities by
16 2015;

17 “(D) to reduce national freight transpor-
18 tation-related carbon dioxide levels by 40 per-
19 cent by 2030; and

20 “(E) to reduce freight transportation-re-
21 lated air, water, and noise pollution and im-
22 pacts on ecosystems and communities on an an-
23 nual basis.

24 “(2) BASELINES.—Not later than 2 years after
25 the date of enactment of the Focusing Resources,

1 Economic Investment, and Guidance to Help Trans-
2 portation Act of 2011, the Secretary shall develop
3 baselines for the goals and shall determine appro-
4 priate methods of data collection to measure the at-
5 tainment of the goals, utilizing the tools and data
6 developed under section 103 of that Act.

7 “(3) AUTHORITY.—Notwithstanding any other
8 provision of law in effect as of the date of enactment
9 of the Focusing Resources, Economic Investment,
10 and Guidance to Help Transportation Act of 2011,
11 the Secretary may, through a process of public no-
12 tice and comment and with reasonable prior notice
13 to the Senate Committee on Commerce, Science, and
14 Transportation and the House of Representatives
15 Committee on Transportation and Infrastructure
16 preceding any significant change, consistent with the
17 public interest, amend the goals under this sub-
18 section or develop additional goals to effectively meet
19 the policy and objectives set forth in this section.”.

20 (b) CONFORMING AMENDMENT.—The table of con-
21 tents for chapter 3 of title 49, United States Code, is
22 amended by inserting after the item relating to section
23 309 the following:

“310. National freight transportation policy.”.

1 **SEC. 102. OFFICE OF FREIGHT PLANNING AND DEVELOP-**
2 **MENT.**

3 (a) IN GENERAL.—Section 102 of title 49, United
4 States Code, is amended—

5 (1) by redesignating subsection (h) as sub-
6 section (i); and

7 (2) by inserting after subsection (g) the fol-
8 lowing:

9 “(h) OFFICE OF FREIGHT PLANNING AND DEVELOP-
10 MENT.—

11 “(1) ESTABLISHMENT.—There is established
12 within the Office of the Secretary an Office of
13 Freight Planning and Development. The Office
14 shall—

15 “(A) coordinate investment of Federal
16 funding to improve the efficiency of the national
17 transportation system to move freight con-
18 sistent with the policy, objectives, and goals of
19 section 310;

20 “(B) facilitate communication among gov-
21 ernment, public, and private freight transpor-
22 tation stakeholders and nonprofit employee
23 labor organizations;

24 “(C) support the Secretary in the develop-
25 ment of the National Freight Transportation
26 Strategic Plan; and

1 “(D) carry out other duties, as prescribed
2 by the Secretary.

3 “(2) ORGANIZATION.—The head of the Office
4 shall be the Assistant Secretary of Freight Planning
5 and Development.

6 “(3) NATIONAL FREIGHT TRANSPORTATION
7 STRATEGIC PLAN.—

8 “(A) DEVELOPMENT.—Not later than 2
9 years after the date of enactment of the Focus-
10 ing Resources, Economic Investment, and Guid-
11 ance To Help Transportation Act of 2011, the
12 Secretary shall develop a long-term National
13 Freight Transportation Strategic Plan to guide
14 planning and investments in the national trans-
15 portation system to move freight to achieve the
16 policy, objectives, and goals set forth in section
17 310.

18 “(B) CONTENTS.—The Plan shall in-
19 clude—

20 “(i) an assessment of the current na-
21 tional transportation system to move
22 freight and the system’s ability to achieve
23 the policy, objectives, and goals set forth in
24 section 310;

1 “(ii) an analysis of emerging and
2 long-term projected trends in economic and
3 national trade policies, workforce training,
4 public health, and environmental condi-
5 tions that will impact the performance,
6 needs, and uses of the national transpor-
7 tation system to move freight;

8 “(iii) a description of the major chal-
9 lenges to effectively meeting the policy, ob-
10 jectives, and goals set forth in section 310
11 and a plan to address such challenges;

12 “(iv) a proposed investment plan to
13 develop priorities for Federal investments
14 to implement the policy, objectives, and
15 goals in section 310 and a strategy to de-
16 velop the coalitions, partnerships, and
17 other collaborative financing efforts nec-
18 essary to ensure stable, reliable funding
19 and completion of freight corridors and
20 projects;

21 “(v) guidelines to encourage the ap-
22 propriate balance of means to finance the
23 national transportation system to move
24 freight to implement the Plan and the in-

1 vestment plan proposed under clause (iv);
2 and

3 “(vi) a list of priority freight corridors
4 and gateways to be improved and devel-
5 oped to meet the policy, objectives, and
6 goals set forth in section 310.

7 “(C) PLAN DEVELOPMENT.—In developing
8 the Plan, the Secretary shall—

9 “(i) consult with appropriate Federal
10 agencies, State, local, and tribal govern-
11 ments, public and private transportation
12 stakeholders, organizations representing
13 transportation employees, nonprofit em-
14 ployee labor organizations, appropriate for-
15 eign governments, and other interested
16 parties;

17 “(ii) consider ongoing Federal, State,
18 and corridor-wide transportation plans;

19 “(iii) provide for public notice and
20 comment, including public hearings; and

21 “(iv) as appropriate, establish advi-
22 sory committees to assist with developing
23 the Plan.

1 “(D) SUBMISSION AND PUBLICATION.—
2 Upon completion of the Plan, the Secretary
3 shall—

4 “(i) post it on the Department of
5 Transportation’s public Web site; and

6 “(ii) submit it to the Senate Com-
7 mittee on Commerce, Science, and Trans-
8 portation, the Senate Committee on Appro-
9 priations, the House of Representatives
10 Committee on Transportation and Infra-
11 structure, and the House of Representa-
12 tives Committee on Appropriations.

13 “(E) IMPLEMENTATION.—Notwithstanding
14 any other provision of law in effect on the date
15 of enactment of the Focusing Resources, Eco-
16 nomic Investment, and Guidance To Help
17 Transportation Act of 2011, the Secretary
18 shall—

19 “(i) implement the Plan consistent
20 with sections 302, 5503, 10101, and
21 13101 of this title and section 101 of title
22 23 to the extent that such sections do not
23 conflict with the policy, objectives, and
24 goals established by section 310;

1 “(ii) review and revise as necessary all
2 relevant freight transportation planning re-
3 quirements to ensure that such require-
4 ments require that regional, State, and
5 local surface transportation planning ef-
6 forts funded with Federal funds are con-
7 sistent with the policy, objectives, and
8 goals established by section 310; and

9 “(iii) require recipients of Federal
10 noncompetitively awarded transportation
11 funds and competitively awarded freight-
12 related grant funds to submit a com-
13 prehensive annual report on the use of
14 such funds used for freight projects, in-
15 cluding a description of—

16 “(I) which projects and priorities
17 were funded with such funds;

18 “(II) the rationale and method
19 employed for apportioning such funds
20 to the projects and priorities; and

21 “(III) how the obligation of such
22 funds is consistent with or advances
23 the policy and objectives established
24 by section 310 and the Plan.

1 “(F) PROGRESS REPORTS.—The Secretary
2 shall submit biennial progress reports on the
3 implementation of the Plan beginning 2 years
4 after the date on which the Secretary posts the
5 completed Plan on the Department’s Web site.
6 The progress reports shall—

7 “(i) describe progress made toward
8 fully implementing the Plan and achieving
9 the policy, objectives, and goals established
10 under section 310;

11 “(ii) describe challenges and obstacles
12 to full implementation;

13 “(iii) describe updates to the Plan
14 necessary to reflect changed circumstances
15 or new developments; and

16 “(iv) make policy and legislative rec-
17 ommendations the Secretary believes are
18 necessary and appropriate to fully imple-
19 ment the Plan.

20 “(G) DATA.—The Secretary may conduct
21 studies, gather information, and require the
22 production of data necessary to develop or up-
23 date the Plan.

1 “(H) FUNDING.—There is authorized to be
2 appropriated to the Secretary of Transportation
3 \$3,000,000 to implement this subsection.”.

4 (b) CONFORMING AMENDMENTS.—

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

7 (2) Section 5315 of title 5, United States Code,
8 is amended by striking “(4)” in the item relating to
9 Assistant Secretaries of Transportation and insert-
10 ing “(5)”.

11 **SEC. 103. TRANSPORTATION INVESTMENT DATA AND PLAN-**
12 **NING TOOLS.**

13 (a) IN GENERAL.—Not later than one year after the
14 date of enactment of this Act, the Secretary shall—

15 (1) develop new tools or improve existing tools
16 to support an outcome-oriented, performance-based
17 approach to evaluate proposed freight-related and
18 other transportation projects. These new or im-
19 proved tools shall include—

20 (A) a systematic cost-benefit analysis;

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

24 (C) a valuation of modal alternatives; and

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

3 (2) facilitate the collection of transportation-re-
4 lated data to support a broad range of evaluation
5 methods and techniques such as demand forecasts,
6 modal diversion forecasts, estimates of the effect of
7 proposed investments on congestion, pollution, public
8 health, and other factors, to assist in making trans-
9 portation investment decisions. At a minimum, the
10 Secretary, in consultation with other relevant Fed-
11 eral agencies, shall consider any improvements to
12 the Commodity Flow Survey that reduce identified
13 freight data gaps and deficiencies and help evaluate
14 forecasts of transportation demand.

15 (b) CONSULTATION.—To the extent practicable, the
16 Secretary shall consult with Federal, State, and local
17 transportation planners to develop, improve, and imple-
18 ment the tools and collect the data in subsection (a).

19 **TITLE II—FREIGHT**
20 **TRANSPORTATION INVESTMENT**
21 **SEC. 201. NATIONAL FREIGHT INFRASTRUCTURE INVEST-**
22 **MENT GRANTS.**

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

1 “SUBCHAPTER III—FINANCIAL ASSISTANCE

2 “§ 5581. National freight infrastructure investment
3 grants4 “(a) ESTABLISHMENT OF PROGRAM.—The Secretary
5 of Transportation shall establish a competitive grant pro-
6 gram to provide financial assistance for capital invest-
7 ments that improve the efficiency of the national transpor-
8 tation system to move freight.9 “(b) ELIGIBLE PROJECTS.—An applicant is eligible
10 for a grant under this section for—11 “(1) a port development or improvement
12 project;

13 “(2) a multimodal terminal facility project;

14 “(3) a land port of entry project;

15 “(4) a freight rail improvement or capacity ex-
16 pansion project;17 “(5) an intelligent transportation system
18 project primarily for freight benefit that reduces
19 congestion or improves safety;20 “(6) a project that improves access to a port or
21 terminal facility;22 “(7) an aerotropolis system, which for purposes
23 of this section is a planned and coordinated
24 multimodal freight and passenger transportation
25 network that, as determined by the Secretary, pro-

1 vides efficient, cost-effective, sustainable, and inter-
2 modal connectivity to a defined region of economic
3 significance centered around a major airport; or

4 “(8) planning, preparation, or design of any
5 project described in this subsection.

6 “(c) PROJECT SELECTION CRITERIA.—In deter-
7 mining whether to award a grant to an eligible applicant
8 under this section, the Secretary shall consider the extent
9 to which the project—

10 “(1) supports the objectives of the National
11 Freight Transportation Strategic Plan developed
12 under section 102(h)(3);

13 “(2) leverages Federal investment by encour-
14 aging non-Federal contributions to the project, in-
15 cluding contributions from public-private partner-
16 ships;

17 “(3) improves the mobility of goods and com-
18 modities;

19 “(4) incorporates new and innovative tech-
20 nologies, including freight-related intelligent trans-
21 portation systems;

22 “(5) improves energy efficiency or reduces
23 greenhouse gas emissions;

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

1 “(7) reduces congestion;

2 “(8) improves the condition of the freight infra-
3 structure, including bringing it into a state of good
4 repair;

5 “(9) improves safety, including reducing trans-
6 portation accidents, injuries, and fatalities;

7 “(10) demonstrates that the proposed project
8 cannot be readily and efficiently realized without
9 Federal support and participation; and

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

12 “(d) PRIORITY.—The Secretary shall give priority to
13 projects that have the highest system performance im-
14 provement relative to their benefit-cost analysis, as meas-
15 ured by the tools developed under section 103 of the Fo-
16 cusing Resources, Economic Investment, and Guidance To
17 Help Transportation Act of 2011.

18 “(e) LETTERS OF INTENT.—

19 “(1) The Secretary may issue a letter of intent
20 to an applicant announcing an intention to obligate,
21 for a major capital project under this subsection, an
22 amount from future available budget authority speci-
23 fied in law that is not more than the amount stipu-
24 lated as the financial participation of the Secretary
25 in the project.

1 “(2) At least 30 days before issuing a letter
2 under paragraph (1) of this subsection, the Sec-
3 retary shall notify in writing the Senate Committee
4 on Commerce, Science, and Transportation and the
5 House of Representatives Committee on Transpor-
6 tation and Infrastructure of the proposed letter or
7 agreement. The Secretary shall include with the no-
8 tification a copy of the proposed letter or agreement,
9 the criteria used under subsection (c) for selecting
10 the project for a grant award, and a description of
11 how the project meets such criteria.

12 “(3) An obligation or administrative commit-
13 ment may be made only when amounts are made
14 available. The letter of intent shall state that the
15 contingent commitment is not an obligation of the
16 Federal Government, and is subject to the avail-
17 ability of funds under Federal law and to Federal
18 laws in force or enacted after the date of the contin-
19 gent commitment.

20 “(f) FEDERAL SHARE OF NET PROJECT COST.—

21 “(1) Based on engineering studies, studies of
22 economic feasibility, and information on the expected
23 use of equipment or facilities, the Secretary shall es-
24 timate the net project cost.

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

4 “(3) The Secretary shall give priority in allo-
5 cating future obligations and contingent commit-
6 ments to incur obligations to grant requests seeking
7 a lower Federal share of the project net capital cost.

8 “(g) COOPERATIVE AGREEMENTS.—

9 “(1) IN GENERAL.—An applicant may enter
10 into an agreement with any public, private, or non-
11 profit entity to cooperatively implement any project
12 funded with a grant under this subchapter.

13 “(2) FORMS OF PARTICIPATION.—Participation
14 by an entity under paragraph (1) may consist of—

15 “(A) ownership or operation of any land,
16 facility, vehicle, or other physical asset associ-
17 ated with the project;

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

21 “(C) carrying out administration, construc-
22 tion management, project management, project
23 operation, or any other management or oper-
24 ational duty associated with the project; and

1 “(D) any other form of participation ap-
2 proved by the Secretary.

3 “(h) OVERSIGHT PROGRAM.—

4 “(1) ESTABLISHMENT.—

5 “(A) IN GENERAL.—The Secretary shall
6 establish an oversight program to monitor the
7 effective and efficient use of funds authorized to
8 carry out this section.

9 “(B) MINIMUM REQUIREMENT.—At a min-
10 imum, the program shall be responsive to all
11 areas relating to financial integrity and project
12 delivery.

13 “(2) FINANCIAL INTEGRITY.—

14 “(A) FINANCIAL MANAGEMENT SYS-
15 TEMS.—The Secretary shall perform annual re-
16 views that address elements of the applicant’s
17 financial management systems that affect
18 projects approved under subsection (a).

19 “(B) PROJECT COSTS.—The Secretary
20 shall develop minimum standards for estimating
21 project costs and shall periodically evaluate the
22 practices of applicants for estimating project
23 costs, awarding contracts, and reducing project
24 costs.

1 “(3) PROJECT DELIVERY.—The Secretary shall
2 perform annual reviews that address elements of the
3 project delivery system of an applicant, which ele-
4 ments include one or more activities that are in-
5 volved in the life cycle of a project from conception
6 to completion of the project.

7 “(4) RESPONSIBILITY OF THE APPLICANTS.—

8 “(A) IN GENERAL.—Each applicant shall
9 submit to the Secretary for approval such
10 plans, specifications, and estimates for each
11 proposed project as the Secretary may require.

12 “(B) APPLICANT SUBRECIPIENTS.—The
13 applicant shall be responsible for determining
14 that a subrecipient of Federal funds under this
15 section has—

16 “(i) adequate project delivery systems
17 for projects approved under this section;
18 and

19 “(ii) sufficient accounting controls to
20 properly manage such Federal funds.

21 “(C) PERIODIC REVIEW.—The Secretary
22 shall periodically review the monitoring of sub-
23 recipients by the applicant.

24 “(5) SPECIFIC OVERSIGHT RESPONSIBIL-
25 ITIES.—Nothing in this section shall affect or dis-

1 charge any oversight responsibility of the Secretary
2 specifically provided for under this title or other
3 Federal law.

4 “(i) MAJOR PROJECTS.—

5 “(1) IN GENERAL.—A recipient of a grant for
6 a project under this section with an estimated total
7 cost of \$500,000,000 or more, and a recipient for
8 such other projects as may be identified by the Sec-
9 retary, shall submit to the Secretary for each
10 project—

11 “(A) a project management plan; and

12 “(B) an annual financial plan.

13 “(2) PROJECT MANAGEMENT PLAN.—A project
14 management plan shall document—

15 “(A) the procedures and processes that are
16 in effect to provide timely information to the
17 project decisionmakers to effectively manage the
18 scope, costs, schedules, quality of, and the Fed-
19 eral requirements applicable to, the project; and

20 “(B) the role of the agency leadership and
21 management team in the delivery of the project.

22 “(3) FINANCIAL PLAN.—A financial plan
23 shall—

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

1 “(B) provide for the annual submission of
2 updates to the Secretary that are based on rea-
3 sonable assumptions, as determined by the Sec-
4 retary, of future increases in the cost to com-
5 plete the project.

6 “(j) OTHER PROJECTS.—A recipient of Federal fi-
7 nancial assistance for a project under this title with an
8 estimated total cost of \$100,000,000 or more that is not
9 covered by subsection (i) shall prepare an annual financial
10 plan. Annual financial plans prepared under this sub-
11 section shall be made available to the Secretary for review
12 upon the request of the Secretary.

13 “(k) OTHER TERMS AND CONDITIONS.—The Sec-
14 retary shall determine what additional grant terms and
15 conditions are necessary and appropriate to meet the re-
16 quirements of this section.

17 “(l) REGULATIONS.—Within 1 year after the date of
18 enactment of the Focusing Resources, Economic Invest-
19 ment, and Guidance To Help Transportation Act of 2011,
20 the Secretary shall prescribe regulations to implement this
21 section.

22 “(m) APPLICANT DEFINED.—In this subchapter, the
23 term ‘applicant’ includes a State, a political subdivision
24 of a State, government-sponsored authorities and corpora-
25 tions, and the District of Columbia.

1 “(n) SECRETARIAL OVERSIGHT.—

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

7 “(2) The Secretary may use amounts available
8 under paragraph (1) of this subsection to make con-
9 tracts for safety, procurement, management, and fi-
10 nancial compliance reviews and audits of a recipient
11 of amounts under paragraph (1).

12 “(3) The Federal Government shall pay the en-
13 tire cost of carrying out a contract under this sub-
14 section.”.

15 (b) CONFORMING AMENDMENT.—The table of con-
16 tents for chapter 55 of title 49, United States Code, is
17 amended by adding at the end the following:

“SUBCHAPTER III—FINANCIAL ASSISTANCE

“5581. National freight infrastructure investment grants.”.

18 **SEC. 202. PORT INFRASTRUCTURE DEVELOPMENT INITIA-**
19 **TIVE.**

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

22 “(C) TRANSFERS.—Amounts appropriated
23 or otherwise made available for any fiscal year
24 for a marine facility or intermodal facility that

1 includes maritime transportation may be trans-
2 ferred, at the option of the recipient of such
3 amounts, to the Fund and administered by the
4 Administrator as a component of a project
5 under the program.”.

○