

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.

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 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 transportation infrastruc-
7 ture-related delays of goods and commodities
8 entering into and out of international points of
9 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 AMENDMENTS.—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;

23 “(C) support the Secretary in the develop-
24 ment of the National Freight Transportation
25 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, public health, and
4 environmental conditions that will impact
5 the performance, needs, and uses of the
6 national transportation system to move
7 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, appropriate for-
14 eign governments, and other interested
15 parties;

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

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

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

23 “(D) SUBMISSION AND PUBLICATION.—
24 Upon completion of the Plan, the Secretary
25 shall—

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

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

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

16 “(i) implement the Plan consistent
17 with sections 302, 5503, 10101, and
18 13101 of this title and section 101 of title
19 23 to the extent that such sections do not
20 conflict with the policy, objectives, and
21 goals established by section 310;

22 “(ii) review and revise as necessary all
23 relevant freight transportation planning re-
24 quirements to ensure that such require-
25 ments require that regional, State, and

1 local surface transportation planning ef-
2 forts funded with Federal funds are con-
3 sistent with the policy, objectives, and
4 goals established by section 310; and

5 “(iii) require recipients of Federal
6 non-competitively awarded transportation
7 funds and competitively awarded freight-
8 related grant funds to submit a com-
9 prehensive annual report on the use of
10 such funds used for freight projects, in-
11 cluding a description of—

12 “(I) which projects and priorities
13 were funded with such funds;

14 “(II) the rationale and method
15 employed for apportioning such funds
16 to the projects and priorities; and

17 “(III) how the obligation of such
18 funds is consistent with or advances
19 the policy and objectives established
20 by section 310 and the Plan.

21 “(F) PROGRESS REPORTS.—The Secretary
22 shall submit biennial progress reports on the
23 implementation of the Plan beginning 2 years
24 after the date on which the Secretary posts the

1 completed Plan on the Department’s Web site.

2 The progress reports shall—

3 “(i) describe progress made toward
4 fully implementing the Plan and achieving
5 the policy, objectives, and goals established
6 under section 310;

7 “(ii) describe challenges and obstacles
8 to full implementation;

9 “(iii) describe updates to the Plan
10 necessary to reflect changed circumstances
11 or new developments; and

12 “(iv) make policy and legislative rec-
13 ommendations the Secretary believes are
14 necessary and appropriate to fully imple-
15 ment the Plan.

16 “(G) DATA.—The Secretary may conduct
17 studies, gather information, and require the
18 production of data necessary to develop or up-
19 date the Plan.

20 “(H) FUNDING.—There are authorized to
21 be appropriated to the Secretary of Transpor-
22 tation \$3,000,000 to implement this sub-
23 section.”.

24 (b) CONFORMING AMENDMENTS.—

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

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

7 **SEC. 103. TRANSPORTATION INVESTMENT DATA AND PLAN-**
8 **NING TOOLS.**

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

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

16 (A) a systematic cost-benefit analysis;

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

20 (C) a valuation of modal alternatives; and

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

23 (2) facilitate the collection of transportation-re-
24 lated data to support a broad range of evaluation
25 methods and techniques such as demand forecasts,

1 modal diversion forecasts, estimates of the effect of
 2 proposed investments on congestion, pollution, public
 3 health, and other factors, to assist in making trans-
 4 portation investment decisions. At a minimum, the
 5 Secretary, in consultation with other relevant Fed-
 6 eral agencies, shall consider any improvements to
 7 the Commodity Flow Survey that reduce identified
 8 freight data gaps and deficiencies and help evaluate
 9 forecasts of transportation demand.

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

14 **TITLE II—FREIGHT**
 15 **TRANSPORTATION INVESTMENT**

16 **SEC. 201. NATIONAL FREIGHT INFRASTRUCTURE INVEST-**
 17 **MENT GRANTS.**

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

21 **“SUBCHAPTER III. FINANCIAL ASSISTANCE**
 22 **“§ 5581. National freight infrastructure investment**
 23 **grants**

24 **“(a) ESTABLISHMENT OF PROGRAM.—**The Secretary
 25 of Transportation shall establish a competitive grant pro-

1 gram to provide financial assistance for capital invest-
2 ments that improve the efficiency of the national transpor-
3 tation system to move freight.

4 “(b) ELIGIBLE PROJECTS.—An applicant is eligible
5 for a grant under this section for—

6 “(1) a port development or improvement
7 project;

8 “(2) a multimodal terminal facility project;

9 “(3) a land port of entry project;

10 “(4) a freight rail improvement or capacity ex-
11 pansion project;

12 “(5) an intelligent transportation system
13 project primarily for freight benefit that reduces
14 congestion or improves safety;

15 “(6) a project that improves access to a port or
16 terminal facility; or

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

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

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

4 “(2) leverages Federal investment by encour-
5 aging non-Federal contributions to the project, in-
6 cluding contributions from public-private partner-
7 ships;

8 “(3) improves the mobility of goods and com-
9 modities;

10 “(4) incorporates new and innovative tech-
11 nologies, including freight-related intelligent trans-
12 portation systems;

13 “(5) improves energy efficiency or reduces
14 greenhouse gas emissions;

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

17 “(7) reduces congestion;

18 “(8) improves the condition of the freight infra-
19 structure, including bringing it into a state of good
20 repair;

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

23 “(10) demonstrates that the proposed project
24 cannot be readily and efficiently realized without
25 Federal support and participation; and

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

3 “(d) PRIORITY.—The Secretary shall give priority to
4 projects that have the highest system performance im-
5 provement relative to their benefit-cost analysis, as meas-
6 ured by the tools developed under section 103 of the Fo-
7 cusing Resources, Economic Investment, and Guidance to
8 Help Transportation Act of 2011.

9 “(e) LETTERS OF INTENT.—

10 “(1) The Secretary may issue a letter of intent
11 to an applicant announcing an intention to obligate,
12 for a major capital project under this subsection, an
13 amount from future available budget authority speci-
14 fied in law that is not more than the amount stipu-
15 lated as the financial participation of the Secretary
16 in the project.

17 “(2) At least 30 days before issuing a letter
18 under paragraph (1) of this subsection, the Sec-
19 retary shall notify in writing the Senate Committee
20 on Commerce, Science, and Transportation and the
21 House of Representatives Committee on Transpor-
22 tation and Infrastructure of the proposed letter or
23 agreement. The Secretary shall include with the no-
24 tification a copy of the proposed letter or agreement,
25 the criteria used under subsection (c) for selecting

1 the project for a grant award, and a description of
2 how the project meets such criteria.

3 “(3) An obligation or administrative commit-
4 ment may be made only when amounts are made
5 available. The letter of intent shall state that the
6 contingent commitment is not an obligation of the
7 Federal Government, and is subject to the avail-
8 ability of funds under Federal law and to Federal
9 laws in force or enacted after the date of the contin-
10 gent commitment.

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

12 “(1) Based on engineering studies, studies of
13 economic feasibility, and information on the expected
14 use of equipment or facilities, the Secretary shall es-
15 timate the net project cost.

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

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

23 “(g) COOPERATIVE AGREEMENTS.—

24 “(1) IN GENERAL.—An applicant may enter
25 into an agreement with any public, private, or non-

1 profit entity to cooperatively implement any project
2 funded with a grant under this subchapter.

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

5 “(A) ownership or operation of any land,
6 facility, vehicle, or other physical asset associ-
7 ated with the project;

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

11 “(C) carrying out administration, construc-
12 tion management, project management, project
13 operation, or any other management or oper-
14 ational duty associated with the project; and

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

17 “(h) OVERSIGHT PROGRAM.—

18 “(1) ESTABLISHMENT.—

19 “(A) IN GENERAL.—The Secretary shall
20 establish an oversight program to monitor the
21 effective and efficient use of funds authorized to
22 carry out this section.

23 “(B) MINIMUM REQUIREMENT.—At a min-
24 imum, the program shall be responsive to all

1 areas relating to financial integrity and project
2 delivery.

3 “(2) FINANCIAL INTEGRITY.—

4 “(A) FINANCIAL MANAGEMENT SYS-
5 TEMS.—The Secretary shall perform annual re-
6 views that address elements of the applicant’s
7 financial management systems that affect
8 projects approved under subsection (a).

9 “(B) PROJECT COSTS.—The Secretary
10 shall develop minimum standards for estimating
11 project costs and shall periodically evaluate the
12 practices of applicants for estimating project
13 costs, awarding contracts, and reducing project
14 costs.

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

21 “(4) RESPONSIBILITY OF THE APPLICANTS.—

22 “(A) IN GENERAL.—Each applicant shall
23 submit to the Secretary for approval such
24 plans, specifications, and estimates for each
25 proposed project as the Secretary may require.

1 “(B) APPLICANT SUBRECIPIENTS.—The
2 applicant shall be responsible for determining
3 that a subrecipient of Federal funds under this
4 section has—

5 “(i) adequate project delivery systems
6 for projects approved under this section;
7 and

8 “(ii) sufficient accounting controls to
9 properly manage such Federal funds.

10 “(C) PERIODIC REVIEW.—The Secretary
11 shall periodically review the monitoring of sub-
12 recipients by the applicant.

13 “(5) SPECIFIC OVERSIGHT RESPONSIBIL-
14 ITIES.—Nothing in this section shall affect or dis-
15 charge any oversight responsibility of the Secretary
16 specifically provided for under this title or other
17 Federal law.

18 “(i) MAJOR PROJECTS.—

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

25 “(A) a project management plan; and

1 “(B) an annual financial plan.

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

4 “(A) the procedures and processes that are
5 in effect to provide timely information to the
6 project decisionmakers to effectively manage the
7 scope, costs, schedules, quality of, and the Fed-
8 eral requirements applicable to, the project; and

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

11 “(3) FINANCIAL PLAN.—A financial plan
12 shall—

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

15 “(B) provide for the annual submission of
16 updates to the Secretary that are based on rea-
17 sonable assumptions, as determined by the Sec-
18 retary, of future increases in the cost to com-
19 plete the project.

20 “(j) OTHER PROJECTS.—A recipient of Federal fi-
21 nancial assistance for a project under this title with an
22 estimated total cost of \$100,000,000 or more that is not
23 covered by subsection (i) shall prepare an annual financial
24 plan. Annual financial plans prepared under this sub-

1 section shall be made available to the Secretary for review
2 upon the request of the Secretary.

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

7 “(l) REGULATIONS.—Within 1 year after the date of
8 enactment of the Focusing Resources, Economic Invest-
9 ment, and Guidance to Help Transportation Act of 2011,
10 the Secretary shall prescribe regulations to implement this
11 section.

12 “(m) APPLICANT DEFINED.—In this subchapter, the
13 term “applicant” includes a State, a political subdivision
14 of a State, government-sponsored authorities and corpora-
15 tions, and the District of Columbia.

16 “(n) SECRETARIAL OVERSIGHT.—

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

22 “(2) The Secretary may use amounts available
23 under paragraph (1) of this subsection to make con-
24 tracts for safety, procurement, management, and fi-

1 nancial compliance reviews and audits of a recipient
2 of amounts under paragraph (1).

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

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

“SUBCHAPTER III. FINANCIAL ASSISTANCE
“5581. National freight infrastructure investment grants”.

9 **SEC. 202. PORT INFRASTRUCTURE DEVELOPMENT INITIA-**
10 **TIVE.**

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

13 “(C) TRANSFERS.—Amounts appropriated
14 or otherwise made available for any fiscal year
15 for a marine facility or intermodal facility that
16 includes maritime transportation may be trans-
17 ferred, at the option of the recipient of such
18 amounts, to the Fund and administered by the
19 Administrator as a component of a project
20 under the program.”.

○