

110TH CONGRESS
2^D SESSION

H. R. 7117

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

SEPTEMBER 26, 2008

Mr. SMITH of Washington 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.**

4 This Act may be cited as the “National Freight Mo-
5 bility Infrastructure Act”.

1 **SEC. 2. FREIGHT MOBILITY INFRASTRUCTURE IMPROVE-**
2 **MENT PROGRAM.**

3 (a) ESTABLISHMENT OF PROGRAM.—The Secretary
4 shall establish a program to provide grants to States and
5 designated entities for projects to improve the efficiency
6 of freight mobility in the United States.

7 (b) DEFINITIONS.—In this section, the following defi-
8 nitions apply:

9 (1) DESIGNATED ENTITY.—The term “des-
10 ignated entity” means—

11 (A) an entity designated by the chief execu-
12 tive officer of a State, the Mayor of the Dis-
13 trict of Columbia, or the designee of either, as
14 eligible to apply for and receive funding under
15 the program established under subsection (a);
16 or

17 (B) a regional authority if the authority is
18 responsible under the laws of a State for a cap-
19 ital project.

20 (2) ELIGIBLE PROJECT COSTS.—The term “eli-
21 gible project costs” means the—

22 (A) reimbursement of the costs of develop-
23 ment phase activities, including planning, feasi-
24 bility analysis, revenue forecasting, environ-
25 mental review, preliminary engineering and de-

1 sign work, and other preconstruction activities;
2 and

3 (B) the costs of construction, reconstruc-
4 tion, rehabilitation, and acquisition of real prop-
5 erty (including land related to the project and
6 improvements to land), environmental mitiga-
7 tion, construction contingencies, acquisition of
8 equipment, and operational improvements.

9 (3) ELIGIBLE PROJECT.—The term “eligible
10 project” means any freight mobility infrastructure
11 project that meets the criteria established in sub-
12 section (d).

13 (4) STATE.—The term “State” has the mean-
14 ing given such term in section 101(a) of title 23,
15 United States Code.

16 (c) APPLICATIONS.—A State or designated entity
17 seeking to receive a grant under this section for an eligible
18 project shall submit to the Secretary an application in
19 such form and in accordance with such requirements as
20 the Secretary may require.

21 (d) COMPETITIVE GRANT SELECTION AND ELIGI-
22 BILITY CRITERIA FOR GRANTS.—

23 (1) IN GENERAL.—The Secretary shall—

24 (A) award grants on a competitive basis;

1 (B) conduct a national solicitation for ap-
2 plications; and

3 (C) establish criteria for selecting among
4 freight projects of national and regional signifi-
5 cance that include, but are not limited to, those
6 which enable—

7 (i) the construction of grade separa-
8 tions at railroad, highway, and railroad-
9 highway junctions;

10 (ii) the construction of railroad by-
11 passes and spurs;

12 (iii) the construction of railroad side
13 tracks;

14 (iv) the expansion of rail and highway
15 tunnels to accommodate larger, taller, and
16 additional volumes of vehicular and rail
17 freight and container stacks;

18 (v) the addition of railroad track and
19 intermodal facilities at international gate-
20 ways, land, air, and sea ports, points of
21 congestion, and logistic centers;

22 (vi) highway and road construction at
23 international gateways, land, air, and sea
24 ports, points of congestion, and logistic

1 centers to better accommodate freight traf-
2 fic;

3 (vii) the construction and improve-
4 ment of rail and highway bridges that
5 carry a substantial amount of freight;

6 (viii) the construction of highway
7 ramps that carry a substantial amount of
8 freight; and

9 (ix) the construction of highway lanes,
10 including lanes that segregate freight and
11 passenger vehicular traffic.

12 (2) PROJECT REQUIREMENTS.—The Secretary
13 may approve a grant under this section for a project
14 only if the Secretary determines that the project—

15 (A) is based on the results of preliminary
16 engineering;

17 (B) is justified based on extent to which
18 the project—

19 (i) will enhance national and regional
20 economies by allowing for economic devel-
21 opment and growth, as measured by—

22 (I) the impact on the Nation's
23 gross domestic product;

1 (II) increases in new businesses
2 and jobs and retention of existing
3 businesses and jobs;

4 (III) State and local tax receipts;
5 and

6 (IV) improved safety as meas-
7 ured by reductions in accidents, inju-
8 ries, and fatalities;

9 (ii) seeks to maximize economic op-
10 portunities for communities, including in-
11 creasing local hiring;

12 (iii) is cost-effective; and

13 (iv) will improve freight mobility and
14 national freight capacity and efficiency;
15 and

16 (C) is supported by an acceptable degree of
17 non-Federal financial commitments.

18 (3) SELECTION CONSIDERATIONS.—In selecting
19 a project under this section, the Secretary shall con-
20 sider the extent to which the project—

21 (A) improves freight mobility and national
22 freight capacity and efficiency;

23 (B) uses operational efficiencies, including
24 intelligent transportation systems, that enhance

1 the efficiency, effectiveness, or both the effi-
2 ciency and effectiveness of the project;

3 (C) helps maintain or protect the environ-
4 ment; and

5 (D) complements and supports the objec-
6 tives of the State or designated entity appli-
7 cant's strategic freight plan.

8 (4) PRELIMINARY ENGINEERING.—In evalu-
9 ating a project under paragraph (2)(A), the Sec-
10 retary shall analyze and consider the results of pre-
11 liminary engineering for the project.

12 (5) NON-FEDERAL FINANCIAL COMMITMENT.—

13 (A) EVALUATION OF PROJECT.—In evalu-
14 ating a project under paragraph (2)(C), the
15 Secretary shall require that—

16 (i) the proposed project plan provides
17 for the availability of contingency amounts
18 that the Secretary determines to be reason-
19 able to cover unanticipated cost increases;
20 and

21 (ii) each proposed non-Federal source
22 of capital and operating financing is stable,
23 reliable, and available within the proposed
24 project timetable.

1 (B) CONSIDERATIONS.—In assessing the
2 stability, reliability, and availability of proposed
3 sources of non-Federal financing under sub-
4 paragraph (A), the Secretary shall consider—

5 (i) existing financial commitments;

6 (ii) the degree to which financing
7 sources are dedicated to the purposes pro-
8 posed;

9 (iii) any debt obligation that exists or
10 is proposed by the recipient for the pro-
11 posed project; and

12 (iv) the extent to which the project
13 has a non-Federal financial commitment
14 that exceeds the required non-Federal
15 share of the cost of the project.

16 (6) REGULATIONS.—Not later than 180 days
17 after the date of enactment of this Act, the Sec-
18 retary shall issue regulations on the manner in
19 which the Secretary will evaluate and rate the
20 projects based on the results of preliminary engi-
21 neering, project justification, and the degree of non-
22 Federal financial commitment, as required under
23 this subsection.

24 (7) PROJECT EVALUATION AND RATING.—

1 (A) IN GENERAL.—A proposed project may
2 advance from preliminary engineering to final
3 design and construction only if the Secretary
4 finds that the project meets the requirements of
5 this subsection and there is a reasonable likeli-
6 hood that the project will continue to meet such
7 requirements.

8 (B) EVALUATION AND RATING.—In mak-
9 ing such findings, the Secretary shall evaluate
10 and rate the project as “highly recommended”,
11 “recommended”, or “not recommended” based
12 on the results of preliminary engineering, the
13 project justification criteria, and the degree of
14 non-Federal financial commitment, as required
15 under this subsection. In rating the projects,
16 the Secretary shall provide, in addition to the
17 overall project rating, individual ratings for
18 each of the criteria established under the regu-
19 lations issued under paragraph (6).

20 (e) LETTERS OF INTENT AND FULL FUNDING
21 GRANT AGREEMENTS.—

22 (1) LETTER OF INTENT.—

23 (A) IN GENERAL.—The Secretary may
24 issue a letter of intent to an applicant announc-
25 ing an intention to obligate, for a project under

1 this section, an amount from future available
2 budget authority specified in law that is not
3 more than the amount stipulated as the finan-
4 cial participation of the Secretary in the
5 project.

6 (B) NOTIFICATION.—At least 60 days be-
7 fore issuing a letter under subparagraph (A) or
8 entering into a full funding grant agreement,
9 the Secretary shall notify in writing the Com-
10 mittee on Transportation and Infrastructure of
11 the House of Representatives and the Com-
12 mittee on Environment and Public Works of the
13 Senate of the proposed letter or agreement. The
14 Secretary shall include with the notification a
15 copy of the proposed letter or agreement as well
16 as the evaluations and ratings for the project.

17 (C) NOT AN OBLIGATION.—The issuance
18 of a letter is deemed not to be an obligation
19 under sections 1108(e), 1108(d), 1501, and
20 1502(a) of title 31, United States Code, or an
21 administrative commitment.

22 (D) OBLIGATION OR COMMITMENT.—An
23 obligation or administrative commitment may
24 be made only when contract authority is allo-
25 cated to a project.

1 (2) FULL FUNDING GRANT AGREEMENT.—

2 (A) IN GENERAL.—A project financed
3 under this subsection shall be carried out
4 through a full funding grant agreement. The
5 Secretary shall enter into a full funding grant
6 agreement based on the evaluations and ratings
7 required under subsection (d)(7).

8 (B) TERMS.—If the Secretary makes a full
9 funding grant agreement with an applicant, the
10 agreement shall—

11 (i) establish the terms of participation
12 by the United States Government in a
13 project under this section;

14 (ii) establish the maximum amount of
15 Government financial assistance for the
16 project;

17 (iii) cover the period of time for com-
18 pleting the project, including a period ex-
19 tending beyond the period of an authoriza-
20 tion; and

21 (iv) make timely and efficient man-
22 agement of the project easier according to
23 the laws of the United States.

24 (C) AGREEMENT.—An agreement under
25 this paragraph obligates an amount of available

1 budget authority specified in law and may in-
2 clude a commitment, contingent on amounts to
3 be specified in law in advance for commitments
4 under this paragraph, to obligate an additional
5 amount from future available budget authority
6 specified in law. The agreement shall state that
7 the contingent commitment is not an obligation
8 of the Government. Interest and other financing
9 costs of efficiently carrying out a part of the
10 project within a reasonable time are a cost of
11 carrying out the project under a full funding
12 grant agreement, except that eligible costs may
13 not be more than the cost of the most favorable
14 financing terms reasonably available for the
15 project at the time of borrowing. The applicant
16 shall certify, in a way satisfactory to the Sec-
17 retary, that the applicant has shown reasonable
18 diligence in seeking the most favorable financ-
19 ing terms.

20 (3) AMOUNTS.—The total estimated amount of
21 future obligations of the Government and contingent
22 commitments to incur obligations covered by all out-
23 standing letters of intent and full funding grant
24 agreements may be not more than the greater of the
25 amount authorized to carry out this section or an

1 amount equivalent to the last 2 fiscal years of fund-
2 ing authorized to carry out this section less an
3 amount the Secretary reasonably estimates is nec-
4 essary for grants under this section not covered by
5 a letter. The total amount covered by new letters
6 and contingent commitments included in full funding
7 grant agreements may be not more than a limitation
8 specified in law.

9 (f) GRANT REQUIREMENTS.—

10 (1) IN GENERAL.—A grant for the construction
11 of a highway under this section shall be subject to
12 all of the requirements of title 23, United States
13 Code.

14 (2) OTHER TERMS AND CONDITIONS.—The Sec-
15 retary shall require that all grants under this section
16 be subject to all terms, conditions, and requirements
17 that the Secretary decides are necessary or appro-
18 priate for purposes of this section, including require-
19 ments for the disposition of net increases in value of
20 real property resulting from the project assisted
21 under this section.

22 (g) GOVERNMENT'S SHARE OF PROJECT COST.—

23 Based on engineering studies, studies of economic feasi-
24 bility, and information on the expected use of equipment
25 or facilities, the Secretary shall estimate the cost of a

1 project receiving assistance under this section. A grant for
2 the project shall not exceed 80 percent of the project cost.

3 (h) ANNUAL REPORT.—Not later than the first Mon-
4 day in February the year after the date of enactment of
5 this Act and each year thereafter, the Secretary shall sub-
6 mit to the Committees on Transportation and Infrastruc-
7 ture and Appropriations of the House of Representatives
8 and the Committees on Environment and Public Works
9 and Appropriations of the Senate a report that includes—

10 (1) a proposal on the allocation of amounts to
11 be made available to finance grants under this sec-
12 tion;

13 (2) evaluations and ratings, as required under
14 subsection (d); and

15 (3) recommendations of projects for funding
16 based on the evaluations and ratings and on existing
17 commitments and anticipated funding levels for the
18 next 3 fiscal years and for the next 10 fiscal years
19 based on information currently available to the Sec-
20 retary.

21 (i) APPLICABILITY OF TITLE 23.—Funds made avail-
22 able to carry out this section shall be available for obliga-
23 tion in the same manner as if such funds were apportioned
24 under chapter 1 of title 23, United States Code, except
25 that such funds shall not be transferable and shall remain

1 available until expended and the Federal share of the cost
2 of a project under this section shall be as provided in this
3 section.

4 **SEC. 3. ESTABLISHMENT OF NATIONAL FREIGHT MOBILITY**
5 **INFRASTRUCTURE FUND.**

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

10 (b) DEPOSITS INTO THE FUND.—The account shall
11 consist of—

12 (1) amounts transferred to the Fund under sec-
13 tion 4286 of the Internal Revenue Code of 1986;
14 and

15 (2) amounts deposited into the Fund under sec-
16 tion 13031(f) of the Consolidated Omnibus Budget
17 Reconciliation Act of 1985 (19 U.S.C. 58c(f)).

18 (c) EXPENDITURES FROM FUND.—

19 (1) IN GENERAL.—Amounts in the account
20 shall be made available to the Secretary of Trans-
21 portation for each of the fiscal years 2010 to 2035,
22 as provided in appropriations Acts, for making ex-
23 penditures to meet the obligations of the United
24 States to carry out this Act.

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

6 **SEC. 4. FREIGHT MOBILITY INFRASTRUCTURE FEE AND**
7 **TAX.**

8 (a) IMPOSITION OF TAX.—

9 (1) IN GENERAL.—Chapter 33 of the Internal
10 Revenue Code of 1986 is amended by adding after
11 subchapter C the following new subchapter:

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

“Sec. 4286. Imposition of tax.

14 **“SEC. 4286. IMPOSITION OF TAX.**

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

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

21 “(1) TRANSPORTATION BY UNRELATED PER-
22 SONS.—In the case of amounts paid to an unrelated
23 person engaged in the business of transporting prop-
24 erty by freight rail or highway for hire, the fair mar-

1 ket value shall be the amount paid for transporting
2 such property.

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

10 “(c) BY WHOM PAID.—

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

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

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

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

1 taxable ground transportation in respect of which
2 such tax is imposed.

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 (2) EXEMPTION FOR UNITED STATES AND POS-
6 SESSIONS.—Section 4293 of such Code is amended
7 by striking “subchapter B” and inserting “sub-
8 chapters B and D”.

9 (3) CREDITS OR REFUNDS TO PERSONS WHO
10 COLLECTED CERTAIN TAXES.—Section 6415 of such
11 Code is amended by striking “or 4271” each place
12 it appears and inserting “4271, or 4286”.

13 (4) EFFECTIVE DATE.—The amendments made
14 by this subsection shall apply to transportation be-
15 ginning on or after the first October 1 beginning on
16 or after the date of the enactment of this Act.

17 (b) FREIGHT MOBILITY CUSTOMS FEE.—

18 (1) FEE ASSESSMENT.—Subsection (a) of sec-
19 tion 13031 of the Consolidated Omnibus Budget
20 Reconciliation Act of 1985 (19 U.S.C. 58c(a)) is
21 amended by adding at the end the following new
22 paragraph:

23 “(11) For carrying out the purposes of the Na-
24 tional Freight Mobility Infrastructure Act, a fee in
25 addition to the fee assessed under paragraph (9), in

1 an amount equal to 25 percent of the fee assessed
2 under paragraph (9).”.

3 (2) DISPOSITION OF FEE.—Subsection (f) of
4 section 13031 of the Consolidated Omnibus Budget
5 Reconciliation Act of 1985 (19 U.S.C. 58c(f)) is
6 amended—

7 (A) in paragraph (1)—

8 (i) in subparagraph (A), by striking “,
9 and” and inserting a semicolon;

10 (ii) in subparagraph (B), by striking
11 the period and inserting “; and”; and

12 (iii) by adding at the end the fol-
13 lowing new subparagraph:

14 “(C) the fees collected under subsection
15 (a)(11) of this section and deposited under
16 paragraph (7) into the National Freight Mobil-
17 ity Infrastructure Fund established by the Na-
18 tional Freight Mobility Infrastructure Act.”;
19 and

20 (B) by adding at the end the following new
21 paragraph:

22 “(7) In the first fiscal year beginning after the
23 date of the enactment of the National Freight Mo-
24 bility Infrastructure Act, and each fiscal year there-
25 after, there shall be deposited into the National

1 Freight Mobility Infrastructure Fund established by
2 such Act, fees collected under subsection (a)(11).”.

3 **SEC. 5. REGULATIONS.**

4 Not later than 180 days after the date of enactment
5 of this Act, the Secretary of Transportation shall issue
6 regulations to carry out this Act.

○