

114TH CONGRESS
1ST SESSION

S. 762

To amend title 23, United States Code, to direct the Secretary of Transportation to establish an innovation in surface transportation program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 17, 2015

Mr. WICKER (for himself, Mr. BOOKER, Mr. CASEY, and Ms. MURKOWSKI) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend title 23, United States Code, to direct the Secretary of Transportation to establish an innovation in surface transportation program, 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 “Innovation in Surface
5 Transportation Act of 2015”.

1 **SEC. 2. INNOVATION IN SURFACE TRANSPORTATION PRO-**
 2 **GRAM.**

3 (a) IN GENERAL.—Chapter 1 of title 23, United
 4 States Code, is amended by inserting after section 104 the
 5 following:

6 **“§ 105. Innovation in surface transportation program**

7 “(a) PURPOSES.—The purposes of this section are—

8 “(1) to increase the return on investment in the
 9 surface transportation system of the United States;

10 “(2) to make the surface transportation system
 11 of the United States more reliable, safe, and effi-
 12 cient by advancing innovative projects selected
 13 through State competitions;

14 “(3) to increase input from local government
 15 and stakeholders on projects receiving funding; and

16 “(4) to leverage Federal highway dollars further
 17 through in-State competitions.

18 “(b) DEFINITIONS.—In this section:

19 “(1) ELIGIBLE ENTITY.—The term ‘eligible en-
 20 tity’ means—

21 “(A) a local government;

22 “(B) a metropolitan planning organization;

23 “(C) a regional transportation authority;

24 “(D) a transit agency;

25 “(E) a tribal government;

1 “(F) a private provider of public transpor-
 2 tation;

3 “(G) a nonprofit transportation organiza-
 4 tion;

5 “(H) a port authority;

6 “(I) a joint power authority;

7 “(J) a freight rail provider; and

8 “(K) a local rail authority.

9 “(2) ELIGIBLE PROJECT.—The term ‘eligible
 10 project’ means—

11 “(A) a project eligible under—

12 “(i) section 133(b), relating to the
 13 surface transportation program;

14 “(ii) section 148, relating to the high-
 15 way safety improvement program;

16 “(iii) section 149(b), relating to the
 17 congestion mitigation and air quality im-
 18 provement program; or

19 “(iv) section 213(b), relating to the
 20 transportation alternatives program; and

21 “(B) a surface transportation project that
 22 will improve the movement of goods along a pri-
 23 mary freight network, including multimodal fa-
 24 cilities near a primary freight route.

1 “(3) PROGRAM.—The term ‘program’, except as
2 otherwise specifically provided, means the ‘innova-
3 tion in surface transportation program’ established
4 under this section.

5 “(4) RURAL LOCAL GOVERNMENT.—The term
6 ‘rural local government’ means a local government
7 for an area that is not an urbanized area (as defined
8 by the Census Bureau).

9 “(5) STATE SELECTION PANEL.—The term
10 ‘State selection panel’ means an innovation in sur-
11 face transportation selection panel established by a
12 State under subsection (e).

13 “(c) ESTABLISHMENT.—The Secretary, in coordina-
14 tion with State transportation departments, shall establish
15 an innovation in surface transportation program in ac-
16 cordance with the requirements of this section.

17 “(d) GRANTS.—

18 “(1) IN GENERAL.—A State shall make grants
19 under this section to eligible entities for eligible
20 projects to be carried out in the State using funds
21 reserved by the State for a fiscal year under sub-
22 section (j)(1).

23 “(2) STATE COMPETITIONS.—

24 “(A) IN GENERAL.—For the purposes of
25 making grants under this section, a State shall

1 conduct a competition each fiscal year under
2 which the State will accept grant applications
3 submitted by eligible entities.

4 “(B) COMPETITION DATES.—A State shall
5 conduct a competition under subparagraph
6 (A)—

7 “(i) not later than 180 days after the
8 date of enactment of the Innovation in
9 Surface Transportation Act of 2015; and

10 “(ii) not later than 30 days after the
11 first day of each fiscal year beginning after
12 the date of enactment of the Innovation in
13 Surface Transportation Act of 2015.

14 “(3) SELECTION CRITERIA.—

15 “(A) ESTABLISHMENT.—The State selec-
16 tion panel established under subsection (e) shall
17 establish and make available to the public the
18 project selection criteria that will be used by the
19 State in conducting competitions under para-
20 graph (2).

21 “(B) FACTORS.—The project selection cri-
22 teria of a State shall provide for the approval
23 of project applications based on the extent to
24 which the projects—

1 “(i) improve the safety for all users of
2 the transportation network;

3 “(ii) strengthen the contribution of a
4 national multimodal freight network to the
5 economic competitiveness of the United
6 States;

7 “(iii) promote multimodal
8 connectivity;

9 “(iv) strengthen return on investment,
10 particularly the impact on local economic
11 development;

12 “(v) improve access to jobs and
13 sources of labor, schools, and opportunity;

14 “(vi) optimize the usage and efficiency
15 through better design and operation of ex-
16 isting transportation facilities;

17 “(vii) improve the reliability of the
18 transportation system of the United
19 States;

20 “(viii) improve environmental per-
21 formance of the transportation system;

22 “(ix) encourage innovation and the
23 use of technology; and

24 “(x) further the purposes described in
25 subsection (a).

“(C) SPECIAL CONSIDERATION OF CERTAIN FACTORS.—In addition to the factors specified in subparagraph (B), the project selection criteria of a State shall provide that special consideration be given equally—

“(i) to projects that—

“(I) maximize the amount of proposed project costs that can be borne by the applicant from non-Federal sources; or

“(II) have prior significant Federal or non-Federal investment; and

“(ii) to projects in public jurisdictions with high poverty areas (as defined by the Census Bureau).

“(D) FUNDING DISTRIBUTION.—The project selection criteria of a State shall take into consideration the equitable distribution of funds by geography and population.

“(4) SPECIAL RULE FOR PRIVATE TRANSPORTATION PROVIDERS.—An eligible entity that is a private transportation provider may submit a project application in a State competition conducted under paragraph (2) only if the application is sponsored by a public entity.

1 “(e) INNOVATION IN SURFACE TRANSPORTATION SE-
2 LECTION PANEL.—

3 “(1) IN GENERAL.—A State (including the Gov-
4 ernor and State Department of Transportation), in
5 coordination with local transportation stakeholders,
6 shall establish an innovation in surface transpor-
7 tation selection panel in accordance with this sub-
8 section.

9 “(2) DUTIES.—A State selection panel shall—

10 “(A) review project applications submitted
11 to the State during a competition conducted
12 under subsection (d)(2); and

13 “(B) approve and disapprove the project
14 applications based on the criteria set forth in
15 subsection (d)(3).

16 “(3) MEMBERSHIP.—A State selection panel
17 shall be composed of the following members to be
18 appointed by the State:

19 “(A) Not fewer than 3 individuals rep-
20 resenting the transportation department of the
21 State.

22 “(B)(i) Not fewer than 3 individuals rep-
23 resenting local governments in the State, with
24 at least 1 representative from each of—

1 “(I) a jurisdiction with a population
2 of 50,000 individuals or fewer;

3 “(II) a jurisdiction with a population
4 of more than 50,000 individuals and not
5 more than 1,000,000 individuals; and

6 “(III) a jurisdiction with a population
7 of more than 1,000,000 individuals, if ap-
8 plicable.

9 “(ii) If a State does not have a jurisdiction
10 that meets the criteria of 1 of the subclauses of
11 clause (i), the selection panel shall select a rep-
12 resentative from a jurisdiction eligible under
13 any of the other subclauses in order to secure
14 the appropriate number of representatives pur-
15 suant to this subparagraph.

16 “(C) Not fewer than 3 individuals rep-
17 resenting metropolitan planning organizations,
18 councils of governments, rural planning organi-
19 zations, and other joint powers authorities in
20 the State charged with transportation respon-
21 sibilities, including Indian tribes and tribal coa-
22 litions.

23 “(4) ADDITIONAL MEMBERS.—In addition to
24 the members appointed under paragraph (3), a
25 State selection panel shall be composed of members

1 to be appointed by the State, in coordination with
2 local transportation stakeholders, from among indi-
3 viduals representing—

4 “(A) local chambers of commerce, includ-
5 ing transportation management organizations,
6 travel and tourism boards, and other coalitions
7 of employers and commerce;

8 “(B) local air quality boards or organiza-
9 tions supporting improved air quality;

10 “(C) State safety boards or local organiza-
11 tions supporting safety;

12 “(D) transit agencies;

13 “(E) port authorities, if applicable;

14 “(F) active transportation organizations;

15 “(G) public interest organizations; and

16 “(H) public health quality boards or local
17 organizations supporting improving public
18 health.

19 “(5) DISTRIBUTION OF REPRESENTATIVES.—A
20 State shall appoint members to the section panel of
21 the State in a manner such that—

22 “(A) the number of members appointed
23 under each of subparagraphs (A), (B), and (C)
24 of paragraph (3) is equal; and

1 “(B) not less than 1 member, and not
2 more than 9 members, appointed under para-
3 graph (4) shall be described in each of subpara-
4 graphs (A), (B), (C), (D), (E) if applicable,
5 (F), (G), and (H) of paragraph (4).

6 “(6) GEOGRAPHIC DIVERSITY.—The members
7 of a State selection panel shall be geographically di-
8 verse, to the extent practicable.

9 “(7) REPRESENTATION LIMITATION.—Except
10 for the representatives described in paragraphs
11 (3)(A) and (3)(B), no entity may be represented on
12 a State selection panel for more than 2 consecutive
13 years if a comparable entity can also be represented
14 on the panel.

15 “(8) CONTINUITY.—A State shall appoint mem-
16 bers to the selection panel of the State using a 2-
17 tiered rotation process that ensures continuity of the
18 panel by rotating the membership of the panel on a
19 staggered basis.

20 “(f) TECHNICAL ASSISTANCE FOR CERTAIN
21 AREAS.—

22 “(1) RURAL ELIGIBILITY.—The State shall sup-
23 port development of project applications under this
24 section if requested by an eligible rural local govern-
25 ment.

1 “(2) RESERVATION OF FUNDS.—The State may
 2 reserve not more than 0.25 percent of the funds re-
 3 served for a fiscal year under subsection (j) to meet
 4 specific requests for support from eligible rural local
 5 governments.

6 “(g) TRANSPARENCY.—Not later than 30 days after
 7 a State has selected projects for a fiscal year to receive
 8 funding under this section, the State shall make available,
 9 in a publicly accessible medium that is easy to navigate—

10 “(1) the criteria and methodology used to select
 11 the projects;

12 “(2) a list of all the projects for which funding
 13 was requested, including, for each such project—

14 “(A) the total estimated project cost;

15 “(B) the amount of funding requested; and

16 “(C) the type of modal project;

17 “(3) a list of projects that were selected to re-
 18 ceive funding under this section, including, for each
 19 such project—

20 “(A) the amount of funding requested;

21 “(B) the amount of funding granted; and

22 “(C) the source of the non-Federal share
 23 of cost of the project; and

24 “(4) the ranking and scoring of all projects for
 25 which funding was requested.

1 “(h) REPORTING REQUIREMENTS.—

2 “(1) STATE REPORTS.—Not later than 180
3 days after the last day of each fiscal year, a State
4 shall submit to the Secretary a report that de-
5 scribes—

6 “(A) the information required under sub-
7 section (g);

8 “(B) the organizations that were rep-
9 resented on the selection panel of the State;

10 “(C) the portion of the funds available to
11 the State for the program that have been obli-
12 gated; and

13 “(D) the percentage of the funds available
14 to the State for the program that were used for
15 administrative expenses.

16 “(2) BIENNIAL REPORT TO CONGRESS.—Not
17 later than September 30, 2017, and biennially there-
18 after, the Secretary shall submit a consolidated re-
19 port on the program, including a review of the State
20 reports submitted pursuant to paragraph (1), to—

21 “(A) the Committee on Banking, Housing,
22 and Urban Affairs of the Senate;

23 “(B) the Committee on Commerce,
24 Science, and Transportation of the Senate;

1 “(C) the Committee on Environment and
2 Public Works of the Senate; and

3 “(D) the Committee on Transportation
4 and Infrastructure of the House of Representa-
5 tives.

6 “(3) AVAILABILITY.—The Secretary shall make
7 the report submitted under paragraph (2) available
8 on the public website of the Department of Trans-
9 portation.

10 “(i) SPECIAL RULE FOR STATES WITH COMPETITIVE
11 AND SUBALLOCATED PROGRAMS.—

12 “(1) IN GENERAL.—The Secretary may permit
13 a State to distribute funding described in subpara-
14 graph (A), (B), (C), (D), or (E) of subsection (j)(1)
15 through the mechanisms described in paragraph (2)
16 if the Secretary certifies that the State is distrib-
17 uting the funding in a manner that fulfills the pur-
18 poses of this section.

19 “(2) DISTRIBUTION MECHANISMS.—Distribu-
20 tion mechanisms that qualify under paragraph (1)
21 include—

22 “(A) an open and competitive State pro-
23 gram that is substantially similar to the re-
24 quirements of this section;

1 “(B) direct suballocation to metropolitan
2 areas of 40 percent of all funds—

3 “(i) apportioned to the State under
4 sections 104(b)(1), 104(b)(2), 104(b)(3),
5 and 104(b)(4); and

6 “(ii) allocated to the State under sec-
7 tion 213(a)(1);

8 “(C) has a competitive State program and
9 direct suballocation to metropolitan areas or di-
10 rect recipients of funds under section 5307 of
11 title 49, of more than 95 percent of the funds—

12 “(i) apportioned to the State under
13 sections 104(b)(1), 104(b)(2), 104(b)(3),
14 and 104(b)(4); or

15 “(ii) allocated to the State under sec-
16 tion 133(d)(1)(B); and

17 “(D) a certification by the Secretary that
18 the State is distributing grant funding in com-
19 pliance with the requirements of this section or
20 in a manner that is substantially similar to
21 those requirements.

22 “(3) PUBLICATION IN FEDERAL REGISTER.—
23 Before making a certification under paragraph (1),
24 the Secretary shall—

1 “(A) publish in the Federal Register the
2 intent of the Secretary to make the certifi-
3 cation;

4 “(B) provide the public not fewer than 90
5 days to comment on the proposed certification;
6 and

7 “(C) take into consideration any comments
8 received during the comment period.

9 “(4) LETTER TO CONGRESS.—At least 15 days
10 before making a certification under paragraph (1),
11 the Secretary shall submit a letter to the congres-
12 sional committees referred to in subsection (h)(2)
13 and the members of the congressional delegation of
14 the State that includes—

15 “(A) a notification of the intent of the Sec-
16 retary to make the certification; and

17 “(B) a justification for the proposed cer-
18 tification.

19 “(j) FUNDING.—

20 “(1) RESERVATION OF FUNDS.—On October 1
21 of each of fiscal year, a State shall make the fol-
22 lowing reservations of funds:

23 “(A) NATIONAL HIGHWAY PERFORMANCE
24 PROGRAM.—The State shall reserve 10 percent

of the amount apportioned to the State for the
fiscal year under section 104(b)(1)—

“(i) for carrying out State competi-
tions under this section; and

“(ii) for making grants under this sec-
tion for eligible projects.

“(B) HIGHWAY SAFETY IMPROVEMENT
PROGRAM.—The State shall reserve not less
than 33 percent of the amount apportioned to
the State for the fiscal year under section
104(b)(3) for making grants under this section
for eligible projects that are projects described
in section 148.

“(C) CONGESTION MITIGATION AND AIR
QUALITY IMPROVEMENT PROGRAM.—

“(i) IN GENERAL.—The State shall
reserve not less than 33 percent of the
amount apportioned to the State for the
fiscal year under section 104(b)(4), and
unobligated balances for this section from
the prior fiscal year for making grants
under this section for eligible projects that
are projects described in section 149(b).

“(ii) NONATTAINMENT AREAS.—
States with nonattainment areas (as de-

1 fined in section 171(2) of the Clean Air
 2 Act (42 U.S.C. 7501(2))) shall use
 3 amounts reserved under this paragraph for
 4 making grants under this section for eligi-
 5 ble projects described in section 149(b) in
 6 those areas.

7 “(D) SURFACE TRANSPORTATION PRO-
 8 GRAM.—The State shall reserve not less than
 9 33 percent of the amount allocated to the State
 10 for the fiscal year under section 133(d)(1)(B)
 11 for making grants under this section for eligible
 12 projects.

13 “(E) TRANSPORTATION ALTERNATIVES
 14 PROGRAM.—The State shall reserve 33 percent
 15 of the amount reserved by the State for the fis-
 16 cal year under section 213(c)(1)(B) for making
 17 grants under this section for eligible projects
 18 that are projects described in section 213(b).

19 “(2) SPECIAL RULE.—Any funds that a State
 20 directly suballocates to metropolitan areas or direct
 21 recipients of funds under section 5307 of title 49 or
 22 awards through an open statewide competition to eli-
 23 gible entities shall be excluded from the funds from
 24 which the reservations under subsection (f)(2) are
 25 made.

1 “(3) NONAWARDED FUNDS.—

2 “(A) IN GENERAL.—A State shall recom-
3 pete the funds using the process under sub-
4 section (d)(2) for funds reserved under this
5 subsection if—

6 “(i) any funds reserved by the State
7 for a fiscal year under paragraph (1) have
8 not been awarded by the State in grants
9 under this section on or before the last day
10 of the fiscal year; and

11 “(ii) any funds awarded in grants
12 under this section remain unobligated by
13 the grant recipient after the last day of the
14 3-year period beginning on the date on
15 which the grant was awarded.

16 “(B) REDIRECTION OF FUNDS.—Once a
17 State has fulfilled the requirements of subpara-
18 graph (A), a State may redirect funds reserved
19 under this subsection for sections 104(b)(1),
20 104(b)(2), 104(b)(3), and 104(b)(4), and
21 213(a)(1) for funds that remain unobligated for
22 an additional 3 fiscal years.”.

1 (b) CLERICAL AMENDMENT.—The analysis for chap-
2 ter 1 of title 23, United States Code, is amended by insert-
3 ing after the item relating to section 104 the following:
 “105. Innovation in surface transportation program.”.

