

112TH CONGRESS
1ST SESSION

S. 1300

To amend titles 23, 45, and 49, United States Code, to encourage the use of private-public partnerships in transportation.

IN THE SENATE OF THE UNITED STATES

JUNE 29, 2011

Mr. KIRK introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend titles 23, 45, and 49, United States Code, to encourage the use of private-public partnerships in transportation.

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 “Lincoln Legacy Infra-
5 structure Development Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) the American Association of State Highway
9 and Transportation Officials estimates current high-
10 way, bridge, public transit, and freight and pas-

1 senger rail funding needs are approximately
2 \$225,000,000,000 to \$340,000,000,000 per year
3 through 2055, while current spending is less than
4 \$90,000,000,000 per year;

5 (2) according to the organization known as
6 Transportation for America, 69,223 bridges, or 11.5
7 percent of all highway bridges in the United States,
8 are considered structurally deficient;

9 (3) according to the Congressional Research
10 Service, for fiscal year 2010, the Highway Trust
11 Fund, the primary funding source for highways and
12 transit, received approximately \$35,000,000,000 in
13 revenue but spent approximately \$50,000,000,000;

14 (4) Congress transferred \$34,500,000,000 in
15 general revenue to the Highway Trust Fund during
16 the period of fiscal years 2008 to 2010 to keep the
17 Highway Trust Fund solvent;

18 (5) Highway Trust Fund outlays during the pe-
19 riod of fiscal years 2011 to 2021 are expected to ex-
20 ceed revenues and interest by approximately
21 \$120,000,000,000;

22 (6) the Congressional Budget Office estimates
23 that the Highway Trust Fund will be unable to meet
24 obligations of the Highway Trust Fund sometime
25 during fiscal year 2012;

1 (7) the United States Chamber of Commerce
2 estimates that further deterioration of transpor-
3 tation networks could result in as much as
4 \$336,000,000,000 in lost growth during the 5 years
5 after the date of enactment of this Act;

6 (8) private-public partnerships are an important
7 tool to help address transportation infrastructure
8 shortfalls;

9 (9) infrastructure experts estimate that there is
10 more than \$400,000,000,000 available for private-
11 sector capital infrastructure investment;

12 (10) according to the Federal Highway Admin-
13 istration, 29 States and 1 United States territory
14 have enacted legislation enabling private-public part-
15 nerships; and

16 (11) State and local governments are uniquely
17 positioned to further develop and use innovative fi-
18 nancing methods for all modes of infrastructure.

19 **SEC. 3. PRIVATE-PUBLIC PARTNERSHIP CHALLENGE**
20 **GRANTS.**

21 (a) IN GENERAL.—Chapter 1 of title 23, United
22 States Code, is amended by inserting after section 149 the
23 following:

1 **“§ 150. Private-public partnership challenge grants**

2 “(a) IN GENERAL.—The Secretary shall establish a
3 program, to be known as the ‘Private-Public Partnership
4 Challenge Grant Program’ (referred to in this section as
5 the ‘program’), to encourage States to develop, enact, and
6 implement private-public partnership enabling legislation
7 and procurement policies.

8 “(b) ELIGIBLE RECIPIENTS.—The Secretary may
9 provide a grant under the program to a State for use in
10 implementing innovative and successful strategies to use
11 private-public partnerships with respect to funding for
12 rail, aviation, transit, highway, and waterway transpor-
13 tation.

14 “(c) APPLICATION.—A State that seeks to receive a
15 grant under the program shall submit to the Secretary an
16 application for the grant at such time, in such manner,
17 and containing such information as the Secretary shall re-
18 quire.

19 “(d) FUNDING.—The Secretary shall use to carry out
20 the program amounts received as Federal surcharges on
21 revenue generated from agreements resulting from the
22 concession or lease of safety rest areas under section
23 111(a)(2).”.

24 (b) CONFORMING AMENDMENT.—The analysis for
25 chapter 1 of title 23, United States Code, is amended by

1 inserting after the item relating to section 149 the fol-
 2 lowing:

“150. Private-public partnership challenge grants.”.

3 **SEC. 4. FEDERAL-AID HIGHWAYS.**

4 (a) AGREEMENTS RELATING TO USE OF AND ACCESS
 5 TO RIGHTS-OF-WAY-INTERSTATE SYSTEM.—

6 (1) IN GENERAL.—Section 111(a) of title 23,
 7 United States Code, is amended—

8 (A) by redesignating subparagraphs (A)
 9 through (C) of paragraph (1) as clauses (i)
 10 through (iii), respectively;

11 (B) by redesignating paragraphs (1) and
 12 (2) as subparagraphs (A) and (B), respectively;

13 (C) by striking “IN GENERAL.—All agree-
 14 ments” and inserting the following:

15 “(a) AGREEMENTS.—

16 “(1) IN GENERAL.—All agreements”; and

17 (D) by adding at the end the following:

18 “(2) COMMERCIALIZATION, LEASE, AND CON-
 19 CESSION OF INTERSTATE SAFETY REST AREAS.—

20 Notwithstanding paragraph (1), the Secretary may
 21 permit a State to enter into 1 or more agreements
 22 for the commercialization, lease, or concession of a
 23 safety rest area constructed or located on a right-of-
 24 way on the Interstate System in the State on the
 25 conditions that—

1 “(A) access to the safety rest area, park-
2 ing, and restrooms remains free of charge;

3 “(B) the safety of motorists is not com-
4 promised by the agreement; and

5 “(C) the State agrees—

6 “(i) to pay to the Secretary, upon en-
7 tering into an agreement under this sub-
8 paragraph, a Federal surcharge equal to 5
9 percent of the total amount received by the
10 State under the agreement, which amounts
11 the Secretary shall deposit in the Highway
12 Trust Fund at the rate that corresponds to
13 the rate at which the State receives
14 amounts under the agreement; and

15 “(ii) to use the remaining amounts re-
16 ceived by the State under the agreement
17 only for purposes relating to a highway or
18 transit transportation project carried out
19 under this title or title 49.”.

20 (b) VENDING MACHINES.—Section 111(b) of title 23,
21 United States Code, is amended—

22 (1) by striking “Notwithstanding” and insert-
23 ing the following:

24 “(1) IN GENERAL.—Notwithstanding”; and

25 (2) by adding at the end the following:

1 “(2) BLIND VENDING FACILITIES.—Notwith-
2 standing any other provision of this Act—

3 “(A) the Secretary shall not impose any
4 surcharge on a State with respect to any blind
5 vending facility established pursuant to para-
6 graph (1); and

7 “(B) the priority accorded licensed blind
8 vendors by paragraph (1) shall not be otherwise
9 limited or diminished as a result of the imple-
10 mentation of the Lincoln Legacy Infrastructure
11 Development Act.”.

12 (c) TOLL ROADS, BRIDGES, TUNNELS, AND FER-
13 RIES.—Section 129(a)(3) of title 23, United States Code,
14 is amended in the last sentence by striking “for any pur-
15 pose for which Federal funds may be obligated by a State
16 under this title” and inserting “, including revenues re-
17 ceived as a result of any agreement entered into by the
18 State for the sale, lease, or concession of a highway,
19 bridge, or tunnel, only for purposes relating to a highway
20 or transit transportation project carried out under this
21 title or title 49”.

22 (d) HOV FACILITIES.—Section 166(a) of title 23,
23 United States Code, is amended by striking paragraph (2)
24 and inserting the following:

25 “(2) OCCUPANCY REQUIREMENT.—

1 “(A) IN GENERAL.—Except as provided in
 2 subparagraph (B) and in other provisions of
 3 this section, not fewer than 2 occupants per ve-
 4 hicle may be required for use of a HOV facility.

5 “(B) CONGESTION.—In any case in which
 6 a State determines that a HOV facility is a de-
 7 graded facility (as described in subsection
 8 (d)(2)(B)) or that the average speed of traffic
 9 on a HOV facility slows to less than the min-
 10 imum average operating speed (as defined in
 11 subsection (d)(2)(A)), the State shall require
 12 not fewer than 3 occupants per vehicle for use
 13 of the HOV facility.”.

14 (e) INNOVATIVE SURFACE TRANSPORTATION FI-
 15 NANCING METHODS.—

16 (1) VALUE PRICING PILOT PROGRAM.—Section
 17 1012(b)(1) of the Intermodal Surface Transpor-
 18 tation Efficiency Act of 1991 (23 U.S.C. 149 note;
 19 105 Stat. 1938) is amended in the second sentence
 20 by striking “as many as 15 such State or local gov-
 21 ernments or public authorities” and inserting
 22 “States, local governments, and public authorities”.

23 (2) INTERSTATE SYSTEM RECONSTRUCTION
 24 AND REHABILITATION PILOT PROGRAM.—Section
 25 1216(b)(2) of the Transportation Equity Act for the

1 21st Century (23 U.S.C. 129 note; 112 Stat. 212)
2 is amended—

3 (A) in the first sentence, by striking “3”
4 and inserting “10”; and

5 (B) by striking the second sentence.

6 (f) EXPRESS LANES DEMONSTRATION PROGRAM.—
7 Section 1604(b)(2) of the SAFETEA–LU (23 U.S.C. 129
8 note; 119 Stat. 1250) is amended in the matter preceding
9 subparagraph (A)—

10 (1) by striking “15”; and

11 (2) by striking “2005 through 2009” and in-
12 serting “2012 through 2017”.

13 (g) INTERSTATE SYSTEM CONSTRUCTION TOLL
14 PILOT PROGRAM.—Section 1604(c) of the SAFETEA–
15 LU (23 U.S.C. 129 note; 119 Stat. 1253) is amended—

16 (1) by striking paragraph (2);

17 (2) by redesignating paragraphs (9) and (1) as
18 paragraphs (1) and (2), respectively; and

19 (3) in paragraph (8), by striking “the date of
20 enactment of this Act” and inserting “the date of
21 enactment of the Lincoln Legacy Infrastructure De-
22 velopment Act”.

23 **SEC. 5. INFRASTRUCTURE FINANCE.**

24 (a) NONSUBORDINATION.—

1 (1) SECURED LOANS.—Section 603(b) of title
2 23, United States Code, is amended—

3 (A) by striking paragraph (6); and

4 (B) by redesignating paragraphs (7) and
5 (8) as paragraphs (6) and (7), respectively.

6 (2) LINES OF CREDIT.—Section 604(b) of title
7 23, United States Code, is amended—

8 (A) by striking paragraph (8); and

9 (B) by redesignating paragraphs (9) and
10 (10) as paragraphs (8) and (9), respectively.

11 (b) REAUTHORIZATION.—Section 608(a) of title 23,
12 United States Code, is amended—

13 (1) in paragraph (1), by striking
14 “\$122,000,000 for each of fiscal years 2005 through
15 2009” and inserting “\$750,000,000 for each of fis-
16 cal years 2012 through 2017”; and

17 (2) in paragraph (3) by striking “\$2,200,000
18 for each of fiscal years 2005 through 2009” and in-
19 serting “\$7,500,000 for each of fiscal years 2012
20 through 2017”.

21 **SEC. 6. RAILROAD REHABILITATION AND IMPROVEMENT**
22 **FINANCING PROGRAM.**

23 (a) ELIGIBLE ACTIVITIES.—Section 822(b)(1) of title
24 45, United States Code, is amended—

1 (1) in subparagraph (B), by striking “or” at
2 the end;

3 (2) in subparagraph (C), by striking the period
4 at the end and inserting a semicolon; and

5 (3) by adding at the end the following:

6 “(D) carry out projects and activities that
7 benefit high-speed rail; or

8 “(E) carry out development phase activi-
9 ties, including planning, feasibility analysis, rev-
10 enue forecasting, environmental review, permit-
11 ting, preliminary engineering and design work,
12 and other preconstruction activities.”.

13 (b) CREDIT RISK REQUIREMENTS.—Section
14 822(h)(2) of title 45, United States Code, is amended by
15 inserting “For purposes of making a finding under sub-
16 section (g)(4), the Secretary, through the Administrator
17 of the Federal Railroad Administration, shall consider the
18 net present value of anticipated dedicated revenues or user
19 fees to be collateral offered by the applicant.” after “the
20 project.”.

21 (c) BIENNIAL REPORT.—Not later than 6 months
22 after the date of the enactment of this Act, and every 6
23 months thereafter, the Administrator of the Federal Rail-
24 road Administration shall submit a report to Congress
25 that describes—

1 (1) the number of loans pending and issued
2 under section 822 of title 45, United States Code;
3 and

4 (2) the time taken to process each of the loans
5 described in paragraph (1).

6 **SEC. 7. AIRPORT PRIVATIZATION PROGRAM.**

7 (a) APPROVAL OF APPLICATIONS.—Section 47134(b)
8 of title 49, United States Code, is amended—

9 (1) in the matter preceding paragraph (1) by
10 striking “with respect to not more than 5 airports”;
11 and

12 (2) in paragraph (1)—

13 (A) by striking subparagraph (A) and in-
14 serting the following:

15 “(A) IN GENERAL.—The Secretary may
16 grant an exemption to an airport sponsor from
17 the requirements of sections 47107(b) and
18 47133 (and any other law, regulation, or grant
19 assurance) to the extent necessary to permit the
20 sponsor to recover from the sale or lease of the
21 airport such amount as may be approved by the
22 Secretary after the sponsor has consulted—

23 “(i) in the case of a primary airport,
24 with each air carrier and foreign air car-

1 rier serving the airport, as determined by
2 the Secretary; and

3 “(ii) in the case of a nonprimary air-
4 port, with at least 65 percent of the own-
5 ers of aircraft based at that airport, as de-
6 termined by the Secretary.”; and

7 (B) by striking subparagraph (C).

8 (b) TERMS AND CONDITIONS.—Section 47134(e) of
9 title 49, United States Code, is amended—

10 (1) by striking paragraphs (4), (5), and (9);

11 (2) by redesignating paragraphs (6), (7), and
12 (8) as paragraphs (4), (5), and (6), respectively; and

13 (3) by adding at the end the following:

14 “(7) A fee imposed by the airport on an air car-
15 rier or foreign air carrier may not include any por-
16 tion for a return on investment or recovery of prin-
17 cipal with respect to consideration paid to a public
18 agency for the lease or sale of the airport unless that
19 portion of the fee is approved by the air carrier or
20 foreign air carrier.”.

21 (c) PARTICIPATION OF CERTAIN AIRPORTS.—Section
22 47134 of title 49, United States Code, is amended—

23 (1) by striking subsection (d); and

24 (2) by redesignating subsections (e) through
25 (m) as subsections (d) through (l), respectively.

1 (d) APPLICABILITY.—The amendments made by this
 2 section shall apply with respect to an exemption issued to
 3 an airport under section 47134 of title 49, United States
 4 Code, before, on, or after the date of enactment of this
 5 Act.

6 (e) CLERICAL AMENDMENTS.—

7 (1) SECTION HEADING.—The section heading
 8 for section 47134 of title 49, United States Code, is
 9 amended to read as follows:

10 **“§ 47134. Private ownership of airports”.**

11 (2) TABLE OF CONTENTS.—The table of sec-
 12 tions for chapter 471 of title 49, United States
 13 Code, is amended by striking the item relating to
 14 section 47134 and inserting the following:

“47134. Private ownership of airports.”.

15 **SEC. 8. PUBLIC TRANSPORTATION.**

16 (a) DEFINITIONS.—In this section—

17 (1) the term “Administrator” mean the Admin-
 18 istrator of the Federal Transit Administration;

19 (2) the term “covered HOT lane facility”
 20 means any high occupancy/toll lane facility used by
 21 a bus service operated by a public transportation
 22 agency, without regard to whether the high occu-
 23 pancy/toll lane facility was converted from a high oc-
 24 cupancy vehicle facility;

1 (3) the term “eligible project” means a project
2 carried out using funding under section 5307 or
3 5309 of title 49, United States Code;

4 (4) the term “eligible recipient” means a recipi-
5 ent of funding under section 5307 or 5309 of title
6 49, United States Code;

7 (5) the term “experimental program” means
8 the public-private partnership experimental program
9 established under subsection (b); and

10 (6) the term “fixed guideway miles” includes
11 fixed guideway revenue vehicle-miles, fixed guideway
12 route miles, and fixed guideway vehicle passenger-
13 miles.

14 (b) PUBLIC-PRIVATE PARTNERSHIP EXPERIMENTAL
15 PROGRAM.—

16 (1) PROGRAM ESTABLISHED.—The Adminis-
17 trator shall establish a 6-year public-private partner-
18 ship experimental program to encourage eligible re-
19 cipients to carry out tests and experimentation in
20 the project development process that are designed
21 to—

22 (A) attract private investment in covered
23 projects; and

24 (B) increase project management flexibility
25 and innovation, improve efficiency, allow for

1 timely project implementation, and create new
2 revenue streams.

3 (2) IMPLEMENTATION OF PROGRAM.—The ex-
4 perimental program shall—

5 (A) except as provided in paragraph (5),
6 identify any provisions of chapter 53 of title 49,
7 United States Code, and any regulations or
8 practices thereunder, that impede greater use of
9 public-private partnerships and private invest-
10 ment in covered projects; and

11 (B) develop procedures and approaches
12 that—

13 (i) address the impediments described
14 in subparagraph (A), in a manner similar
15 to the Special Experimental Project Num-
16 ber 15 of the Federal Highway Adminis-
17 tration (commonly referred to as “SEP-
18 15”); and

19 (ii) protect the public interest and any
20 public investment in covered projects.

21 (3) REPORT.—Not later than 2 years after the
22 date of enactment of this Act, and every 2 years
23 thereafter until the termination of the experimental
24 program, the Administrator shall submit to Congress
25 a report on the status of the experimental program.

1 (4) RULEMAKING.—Not later than 180 days
2 after the date of enactment of this Act, the Adminis-
3 trator shall issue rules to carry out the experimental
4 program.

5 (5) RULE OF CONSTRUCTION.—Nothing in this
6 subsection may be construed to allow the Adminis-
7 trator to waive any requirement under—

8 (A) section 5333 of title 49, United States
9 Code;

10 (B) the National Environmental Policy Act
11 of 1969 (42 U.S.C. 4321 et seq.); or

12 (C) any other provision of Federal law not
13 described in paragraph (2)(A).

14 (c) DETERMINATION OF NUMBER OF FIXED GUIDE-
15 WAY MILES.—

16 (1) IN GENERAL.—For purposes of appor-
17 tioning funding under sections 5307 and 5309 of
18 title 49, United States Code, the Administrator shall
19 deem covered HOT lane facility miles in an area to
20 be fixed guideway miles attributable to the area.

21 (2) AMOUNT APPORTIONED NOT AFFECTED.—
22 Notwithstanding any other provision of law, the Sec-
23 retary may not apportion an amount for an urban-
24 ized area under section 5307 or 5309 of title 49,
25 United States Code, for fiscal year 2012, or any fis-

1 cal year thereafter, that is less than the amount ap-
 2 portioned for the urbanized area under section 5307
 3 or 5309, respectively, for fiscal year 2011, if the re-
 4 duction in amount is solely attributable to the re-
 5 quirement under paragraph (1).

6 (3) AVAILABILITY OF FUNDS.—There shall be
 7 available from the Mass Transit Account of the
 8 Highway Trust fund for fiscal year 2012, and each
 9 fiscal year thereafter, such sums as are necessary to
 10 carry out this subsection.

11 **SEC. 9. REMOVAL OF CAP ON EXEMPT FACILITY BONDS**
 12 **USED TO FINANCE QUALIFIED HIGHWAY OR**
 13 **SURFACE FREIGHT TRANSFER FACILITIES.**

14 (a) IN GENERAL.—Subsection (m) of section 142 of
 15 the Internal Revenue Code of 1986 is amended—

16 (1) by striking paragraph (2), and

17 (2) by redesignating paragraphs (3) and (4) as
 18 paragraphs (2) and (3).

19 (b) EFFECTIVE DATE.—The amendments made by
 20 this section shall apply to bonds issued after the date of
 21 the enactment of this Act.

1 **SEC. 10. REDUCTION IN ANNUAL ADJUSTMENTS TO PAY**
2 **SCHEDULES FOR FEDERAL EMPLOYEES FOR**
3 **FISCAL YEARS 2013 THROUGH 2021.**

4 For each of fiscal years 2013 through 2021, section
5 5303(a) of title 5, United States Code, shall be applied
6 by substituting “1 percentage point” for “one-half of 1
7 percentage point”.

8 **SEC. 11. FUNDING.**

9 Of the Federal funds saved for the period of fiscal
10 years 2013 through 2021 as a result of the application
11 of section 9 of this Act and subsections (b) and (c) of
12 section 147 of the Continuing Appropriations Act, 2011
13 (Public Law 111–242; 124 Stat. 2607, 124 Stat. 3518)—

14 (1) such sums as may be necessary to carry out
15 this Act and any amendments made by this Act shall
16 be deposited into the Highway Trust Fund; and

17 (2) the remainder of the funds shall be used for
18 purposes of deficit reduction.

○