

112TH CONGRESS
1ST SESSION

S. _____

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

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

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 “Private-Public Part-
5 nership Act of 2011”.

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 amounts received by the
10 State under the agreement; and

11 “(ii) to use the remaining amounts re-
12 ceived by the State under the agreement
13 only for highway or transit transportation
14 purposes approved by the Secretary.”.

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

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

4 “(2) OCCUPANCY REQUIREMENT.—

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

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

18 (d) INNOVATIVE SURFACE TRANSPORTATION FI-
19 NANCING METHODS.—

20 (1) VALUE PRICING PILOT PROGRAM.—Section
21 1012(b)(1) of the Intermodal Surface Transpor-
22 tation Efficiency Act of 1991 (23 U.S.C. 149 note;
23 105 Stat. 1938) is amended in the second sentence
24 by striking “as many as 15 such State or local gov-

1 ernments or public authorities” and inserting
2 “States, local governments, and public authorities”.

3 (2) INTERSTATE SYSTEM RECONSTRUCTION
4 AND REHABILITATION PILOT PROGRAM.—Section
5 1216(b)(2) of the Transportation Equity Act for the
6 21st Century (23 U.S.C. 129 note; 112 Stat. 212)
7 is amended—

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

10 (B) by striking the second sentence.

11 (e) EXPRESS LANES DEMONSTRATION PROGRAM.—
12 Section 1604(b)(2) of the SAFETEA-LU (23 U.S.C. 129
13 note; 119 Stat. 1250) is amended in the matter preceding
14 subparagraph (A)—

15 (1) by striking “15”; and

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

18 (f) INTERSTATE SYSTEM CONSTRUCTION TOLL
19 PILOT PROGRAM.—Section 1604(c) of the SAFETEA-LU
20 (23 U.S.C. 129 note; 119 Stat. 1253) is amended—

21 (1) by striking paragraph (2);

22 (2) by redesignating paragraphs (9) and (1) as
23 paragraphs (1) and (2), respectively; and

24 (3) in paragraph (8), by striking “the date of
25 enactment of this Act” and inserting “the date of

1 enactment of the Private-Public Partnership Act of
2 2011”.

3 **SEC. 5. INFRASTRUCTURE FINANCE.**

4 (a) NONSUBORDINATION.—

5 (1) SECURED LOANS.—Section 603(b) of title
6 23, United States Code, is amended—

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

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

10 (2) LINES OF CREDIT.—Section 604(b) of title
11 23, United States Code, is amended—

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

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

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

17 (1) in paragraph (1), by striking
18 “\$122,000,000 for each of fiscal years 2005 through
19 2009” and inserting “\$750,000,000 for each of fis-
20 cal years 2012 through 2017”; and

21 (2) in paragraph (3), by striking “2005
22 through 2009” and inserting “2012 through 2017”.

1 **SEC. 6. RAILROAD REHABILITATION AND IMPROVEMENT**
2 **FINANCING PROGRAM.**

3 (a) **ELIGIBLE ACTIVITIES.**—Section 822(b)(1) of title
4 45, United States Code, is amended—

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

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

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

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

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

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

25 (c) **BIANNUAL REPORT.**—Not later than 6 months
26 after the date of the enactment of this Act, and every 6

1 months thereafter, the Administrator of the Federal Rail-
2 road Administration shall submit a report to Congress
3 that describes—

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

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

9 **SEC. 7. AIRPORT PRIVATIZATION PROGRAM.**

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

12 (1) in the matter preceding paragraph (1) by
13 striking “with respect to not more than 5 airports”;
14 and

15 (2) in paragraph (1)—

16 (A) by striking subparagraph (A) and in-
17 serting the following:

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

1 “(i) in the case of a primary airport,
2 with each air carrier and foreign air car-
3 rier serving the airport, as determined by
4 the Secretary; and

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

9 (B) by striking subparagraph (C).

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

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

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

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

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

23 (c) PARTICIPATION OF CERTAIN AIRPORTS.—Section
24 47134 of title 49, United States Code, is amended—

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

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

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

8 (e) CLERICAL AMENDMENTS.—

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

12 **“§ 47134. Private ownership of airports”.**

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

“47134. Private ownership of airports.”.

17 **SEC. 8. MASS TRANSIT.**

18 (a) DEFINITIONS.—In this section—

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

21 (2) the term “covered HOT lane facility”
22 means any high occupancy/toll lane facility used by
23 a bus service operated by a public transportation
24 agency, without regard to whether the high occu-

1 pancy/toll lane facility was converted from a high oc-
2 cupancy vehicle facility;

3 (3) the term “eligible project” means a project
4 carried out using funding under section 5307 or
5 5309 of title 49, United States Code;

6 (4) the term “eligible recipient” means a recipi-
7 ent of funding under section 5307 or 5309 of title
8 49, United States Code;

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

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

16 (b) PUBLIC-PRIVATE PARTNERSHIP EXPERIMENTAL
17 PROGRAM.—

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

24 (A) attract private investment in covered
25 projects; and

1 (B) increase project management flexibility
2 and innovation, improve efficiency, allow for
3 timely project implementation, and create new
4 revenue streams.

5 (2) IMPLEMENTATION OF PROGRAM.—The ex-
6 perimental program shall—

7 (A) identify any provisions of chapter 53 of
8 title 49, United States Code, and any regula-
9 tions or practices thereunder, that impede
10 greater use of public-private partnerships and
11 private investment in covered projects; and

12 (B) develop procedures and approaches
13 that—

14 (i) address the impediments described
15 in subparagraph (A), in a manner similar
16 to the Special Experimental Project Num-
17 ber 15 of the Federal Highway Adminis-
18 tration (commonly referred to as “SEP-
19 15”); and

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

22 (3) REPORT.—Not later than 2 years after the
23 date of enactment of this Act, and every 2 years
24 thereafter until the termination of the experimental

1 program, the Administrator shall submit to Congress
2 a report on the status of the experimental program.

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

7 (5) RULE OF CONSTRUCTION.—Nothing in this
8 subsection may be construed to allow the Adminis-
9 trator to waive any requirement under the National
10 Environmental Policy Act of 1969 (42 U.S.C. 4321
11 et seq.) or any other provision of Federal law not de-
12 scribed in paragraph (2)(A).

13 (c) DETERMINATION OF NUMBER OF FIXED GUIDE-
14 WAY MILES.—For purposes of apportioning funding under
15 sections 5307 and 5309 of title 49, United States Code,
16 the Administrator shall deem covered HOT lane facility
17 miles in an area to be fixed guideway miles attributable
18 to the area.

19 **SEC. 9. REDUCTION IN ANNUAL ADJUSTMENTS TO PAY**
20 **SCHEDULES FOR FEDERAL EMPLOYEES FOR**
21 **FISCAL YEARS 2013 THROUGH 2021.**

22 For each of fiscal years 2013 through 2021, section
23 5303(a) of title 5, United States Code, shall be applied
24 by substituting “1 percentage point” for “one-half of 1
25 percentage point”.

1 **SEC. 10. FUNDING.**

2 Of the Federal funds saved for the period of fiscal
3 years 2012 through 2016 as a result of the application
4 of section 9 of this Act and subsections (b) and (c) of
5 section 147 of the Continuing Appropriations Act, 2011
6 (Public Law 111–242; 124 Stat. 2607, 124 Stat. 3518)—

7 (1) the Secretary of Transportation shall use
8 such sums as are necessary to carry out this Act and
9 amendments made by this Act; and

10 (2) the remainder of the funds shall be used for
11 purposes of deficit reduction.