

114TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

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.

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IN THE SENATE OF THE UNITED STATES

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 \_\_\_\_\_

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**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).

1           “(C) SPECIAL CONSIDERATION OF CER-  
2           TAIN FACTORS.—In addition to the factors  
3           specified in subparagraph (B), the project selec-  
4           tion criteria of a State shall provide that special  
5           consideration be given equally—

6                   “(i) to projects that—

7                           “(I) maximize the amount of pro-  
8                           posed project costs that can be borne  
9                           by the applicant from non-Federal  
10                          sources; or

11                           “(II) have prior significant Fed-  
12                           eral or non-Federal investment; and

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

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

20           “(4) SPECIAL RULE FOR PRIVATE TRANSPOR-  
21           TATION PROVIDERS.—An eligible entity that is a pri-  
22           vate transportation provider may submit a project  
23           application in a State competition conducted under  
24           paragraph (2) only if the application is sponsored by  
25           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); and

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

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

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

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

7 “(B) HIGHWAY SAFETY IMPROVEMENT  
8 PROGRAM.—The State shall reserve not less  
9 than 33 percent of the amount apportioned to  
10 the State for the fiscal year under section  
11 104(b)(3) for making grants under this section  
12 for eligible projects that are projects described  
13 in section 148.

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

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

24 “(ii) NONATTAINMENT AREAS.—  
25 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(e)(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.”.

23 (b) CLERICAL AMENDMENT.—The analysis for chap-  
24 ter 1 of title 23, United States Code, is amended by insert-  
25 ing after the item relating to section 104 the following:

“105. Innovation in surface transportation program.”.