

Nationally Significant Freight and Highway Projects Program As Amended by ATIA – 7.29.19

Prepared by Coalition for America's Gateways & Trade Corridors

EXISTING LAW IS IN BLACK; ATIA CHANGES ARE MARKED IN RED

§117. Nationally significant freight and highway projects

(a) Establishment.-

(1) In general.-There is established a nationally significant freight and highway projects program to provide financial assistance for projects of national or regional significance.

(2) Goals.-The goals of the program shall be to-

(A) improve the safety, efficiency, and reliability of the movement of freight and people **in and across rural and urban areas**;

(B) generate national or regional economic benefits and an increase in the global economic competitiveness of the United States;

(C) reduce highway congestion and bottlenecks;

(D) improve connectivity between modes of freight transportation;

(E) enhance the resiliency of critical highway infrastructure and help protect the environment;

(F) improve roadways vital to national energy security, **including highways that support movement of energy equipment**; and

(G) address the impact of population growth on the movement of people and freight.

(b) Grant Authority.-

(1) In general.-In carrying out the program established in subsection (a), the Secretary may make grants, on a competitive basis, in accordance with this section.

(2) Grant amount.-Except as otherwise provided, each grant made under this section shall be in an amount that is at least \$25,000,000.

(3) Grant administration.- The Secretary may –

(A) retain not more than a total of 2 percent of the funds made available to carry out this section for the National Surface Transportation and Innovative Finance Bureau to review applications for grants under this section; and

(B) transfer portions of the funds retained under subparagraph (A) to the relevant Administrators to fund the award and oversight of grants provided under this section.

(c) Eligible Applicants.-

(1) In general.-The Secretary may make a grant under this section to the following:

(A) A State or a group of States.

(B) A metropolitan planning organization that serves an urbanized area (as defined by the Bureau of the Census) with a population of more than 200,000 individuals.

(C) A unit of local government or a group of local governments.

(D) A political subdivision of a State or local government.

(E) A special purpose district or public authority with a transportation function, including a port authority.

(F) A Federal land management agency that applies jointly with a State or group of States.

(G) A tribal government or a consortium of tribal governments.

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(H) A multistate or multijurisdictional group of entities described in this paragraph.

(2) Applications.-To be eligible for a grant under this section, an entity specified in paragraph (1) shall submit to the Secretary an application in such form, at such time, and containing such information as the Secretary determines is appropriate.

(d) Eligible Projects.-

(1) In general.-Except as provided in subsection (e), the Secretary may make a grant under this section only for a project that-

(A) is-

(i) a highway freight project carried out on the National Highway Freight Network established under section 167;

(ii) a highway or bridge project carried out on the National Highway System, including-

(I) a project to add capacity to the Interstate System to improve mobility; or

(II) a project in a national scenic area;

(iii) a freight project that is-

(I) a freight intermodal or freight rail project; or

(II) within the boundaries of a public or private freight rail, water (including ports), or intermodal facility and that is a surface transportation infrastructure project necessary to facilitate direct intermodal interchange, transfer, or access into or out of the facility;

~~or~~

(iv) a railway-highway grade crossing or grade separation project; ~~and-or~~

(v) a wildlife crossing project; and

(B) has eligible project costs that are reasonably anticipated to equal or exceed the lesser of-

(i) \$100,000,000; or

(ii) in the case of a project-

(I) located in 1 State, 30 percent of the amount apportioned under this chapter to the State in the most recently completed fiscal year; or

(II) located in more than 1 State, 50 percent of the amount apportioned under this chapter to the participating State with the largest apportionment under this chapter in the most recently completed fiscal year.

(2) Limitation.-

(A) In general.-Not more than ~~\$500,000,000~~ **30 percent** of the amounts made available for grants under this section for fiscal years ~~2016 through 2020, in the aggregate each of the fiscal years~~ **2021 through 2025**, may be used to make grants for projects described in paragraph (1)(A)(iii) and such a project may only receive a grant under this section if-

(i) the project will make a significant improvement to freight movements on the National Highway Freight Network; and

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(ii) the Federal share of the project funds only elements of the project that provide public benefits.

(B) Exclusions.-The limitation under subparagraph (A)-

(i) shall not apply to a railway-highway grade crossing or grade separation project; and

(ii) with respect to a multimodal project, shall apply only to the non-highway portion or portions of the project.

(3) Critical Rural Interstate Projects. --

(A) REQUIREMENT.—Not less than \$500,000,000 of the amounts made available for grants under this section for fiscal years 2021 through 2025, in the aggregate, shall be used to make grants for Interstate interchange projects between 2 routes on the Interstate System that—

(i) are located in a State—

(I) with a population density of not more than 80 persons per square mile of land area, based on the 2010 census; and

(II) that has 3 or fewer Interstate interchanges between 2 routes on the Interstate System; and

(ii) are projects that—

(I) address a freight system need identified in a State freight plan under section 70202 of title 49 (referred to in this paragraph as a 'State freight plan');

(II) address a freight mobility issue identified in a State freight plan; or

(III) are identified in a State freight plan.

(B) INCLUSION IN STATE FREIGHT PLAN.—A project described in subparagraph (A)(ii)(III) may include a project listed in the freight investment plan required under section 70202(b)(9) of title 49.

(C) UNUTILIZED AMOUNTS. -- If, in fiscal year 2025, the Secretary determines that grants under this paragraph will not allow for the amount reserved under subparagraph (A) to be fully utilized, the Secretary shall use the unutilized amounts to make other grants under this section during that fiscal year.

(4) CRITICAL URBAN STATE PROJECTS.—

(A) REQUIREMENT.—Not less than \$500,000,000 of the amounts made available for grants under this section for fiscal years 2021 through 2025, in the aggregate, shall be used to make grants to eligible projects that are located in a State with a population density of not less than 400 persons per square mile of land area, based on the 2010 census.

(B) INCLUSION IN STATE FREIGHT PLAN.—A project described in subparagraph (A) may include a project listed in the freight investment plan required under section 70202(b)(9) of title 49.

(C) UNUTILIZED AMOUNTS.—If, in fiscal year 2025, the Secretary determines that grants under this paragraph will not allow for the amount reserved under subparagraph (A) to be fully utilized, the Secretary shall use the unutilized amounts to make other grants under this section during that fiscal year.

(e) Small Projects.-

(1) In general.-The Secretary shall reserve ~~40~~ not less than 15 percent of the amounts made available for grants under this section each fiscal year to make grants for projects

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described in subsection (d)(1)(A) that do not satisfy the minimum threshold under subsection (d)(1)(B).

(2) Grant amount.-Each grant made under this subsection shall be in an amount that is at least \$5,000,000.

(3) Project selection considerations.-In addition to other applicable requirements, in making grants under this subsection the Secretary shall consider-

(A) the cost effectiveness of the proposed project; ~~and~~

(B) the effect of the proposed project on mobility in the State and region in which the project is carried out.

(C) the effect of the proposed project on safety on freight corridors with significant hazards, such as high winds, heavy snowfall, flooding, rockslides, mudslides, wildfire, wildlife crossing onto the roadway, or steep grades.

(4) REQUIREMENT.- Of the amounts reserved under paragraph (1), not less than 30 percent shall be used for projects in rural areas (as defined in subsection (i)(3)).

(f) Eligible Project Costs.-Grant amounts received for a project under this section may be used for-

(1) development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, preliminary engineering and design work, and other preconstruction activities; and

(2) construction, reconstruction, rehabilitation, acquisition of real property (including land related to the project and improvements to the land), environmental mitigation, construction contingencies, acquisition of equipment, and operational improvements directly related to improving system performance.

(g) Project Requirements.-The Secretary may select a project described under this section (other than subsection (e)) for funding under this section only if the Secretary determines that-

(1) the project will generate national or regional economic, mobility, or safety benefits;

(2) the project will be cost effective;

(3) the project will contribute to the accomplishment of 1 or more of the national goals described under [section 150 of this title](#);

(4) the project is based on the results of preliminary engineering;

(5) with respect to related non-Federal financial commitments-

(A) 1 or more stable and dependable sources of funding and financing are available to construct, maintain, and operate the project; and

(B) contingency amounts are available to cover unanticipated cost increases;

(6) the project cannot be easily and efficiently completed without other Federal funding or financial assistance available to the project sponsor; and

(7) the project is reasonably expected to begin construction not later than 18 months after the date of obligation of funds for the project.

(h) Additional Considerations.-In making a grant under this section, the Secretary shall consider-

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(1) utilization of nontraditional financing, innovative design and construction techniques, or innovative technologies;

(2) utilization of non-Federal contributions; ~~and~~

(3) contributions to geographic diversity among grant recipients, including the need for a balance between the needs of rural and urban communities. ~~And~~

(4) enhancement of freight resilience to natural hazards or disasters, including high winds, heavy snowfall, flooding, rockslides, mudslides, wildfire, wildlife crossing onto the roadway, or steep grades.

(i) Rural Areas.-

(1) In general.-The Secretary shall reserve not less than 25 percent of the amounts made available for grants under this section, including the amounts made available under subsection (e), each fiscal year to make grants for projects located in rural areas.

(2) Excess funding.-In any fiscal year in which qualified applications for grants under this subsection will not allow for the amount reserved under paragraph (1) to be fully utilized, the Secretary shall use the unutilized amounts to make ~~other grants under this section~~ grants under subsection (e).

(3) Rural area defined.-In this subsection, the term "rural area" means an area that is outside an urbanized area with a population of over 200,000.

~~(j) Federal Share.-~~

~~(1) In general.-The Federal share of the cost of a project assisted with a grant under this section may not exceed 60 percent.~~

~~(2) Maximum federal involvement.-Federal assistance other than a grant under this section may be used to satisfy the non-Federal share of the cost of a project for which such a grant is made, except that the total Federal assistance provided for a project receiving a grant under this section may not exceed 80 percent of the total project cost.~~

~~(3) Federal land management agencies.-Notwithstanding any other provision of law, any Federal funds other than those made available under this title or title 49 may be used to pay the non-Federal share of the cost of a project carried out under this section by a Federal land management agency, as described under subsection (c)(1)(F).~~

(j) FEDERAL ASSISTANCE –

(1) Federal Share –

(A) In General – Except as provided in subparagraph (B) or for a grant under subsection (q), the Federal share of the cost of a project assisted with a grant under this section may not exceed 60 percent.

(B) Small Projects – In the case of a project described in subsection (e)(1), the Federal share of the cost of the project shall be 80 percent.

(2) Maximum federal involvement.-Except for grants under subsection (q), Federal assistance other than a grant under this section may be used to satisfy the non-Federal share of the cost of a project for which such a grant is made, except that

(A) for a state with a population density of not more than 80 persons per square mile of land area, based on the 2010 census, the maximum share of the total Federal assistance provided for a project receiving a grant under this section shall be the applicable share under section 120 (b); and

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(B) for a state not described in subparagraph (A), the total Federal assistance provided for a project receiving a grant under this section may not exceed 80 percent of the total project cost.

(3) Federal land management agencies.-Notwithstanding any other provision of law, any Federal funds other than those made available under this title or title 49 may be used to pay the non-Federal share of the cost of a project carried out under this section by a Federal land management agency, as described under subsection (c)(1)(F).

(k) EFFICIENT USE OF NON-FEDERAL FUNDS.—

(1) IN GENERAL.—Notwithstanding any other provision of law and subject to approval by the Secretary under paragraph (2)(B), in the case of any grant for a project under this section, during the period beginning on the date on which the grant recipient is selected and ending on the date on which the grant agreement is signed—

(A) the grant recipient may obligate and expend non-Federal funds with respect to the project for which the grant is provided; and

(B) any non-Federal funds obligated or expended in accordance with subparagraph (A) shall be credited toward the non-Federal cost share for the project for which the grant is provided.

(2) REQUIREMENTS.—

(A) APPLICATION.—In order to obligate and expend non-Federal funds under paragraph (1), the grant recipient shall submit to the Secretary a request to obligate and expend non-Federal funds under that paragraph, including—

(i) a description of the activities the grant recipient intends to fund;

(ii) a justification for advancing the activities described in clause (i), including an assessment of the effects to the project scope, schedule, and budget if the request is not approved; and

(iii) the level of risk of the activities described in clause (i). “

(B) APPROVAL.—The Secretary shall approve or disapprove each request submitted under subparagraph (A).

(C) COMPLIANCE WITH APPLICABLE REQUIREMENTS.—Any non-Federal funds obligated or expended under paragraph (1) shall comply with all applicable requirements, including any requirements included in the grant agreement.

(3) EFFECT.—The obligation or expenditure of any non-Federal funds in accordance with this subsection shall not—

(A) affect the signing of a grant agreement or other applicable grant procedures with respect to the applicable grant;

(B) create an obligation on the part of the Federal Government to repay any non-Federal funds if the grant agreement is not signed; or

(C) affect the ability of recipient of the grant to obligate or expend non-Federal funds to meet the non-Federal cost share for the project for which the grant is provided after the period described in paragraph (1).

(l) Treatment of Freight Projects.-Notwithstanding any other provision of law, a freight project carried out under this section shall be treated as if the project is located on a Federal-aid highway.

(m) TIFIA Program.-At the request of an eligible applicant under this section, the Secretary may use amounts awarded to the entity to pay subsidy and administrative costs necessary to

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provide the entity Federal credit assistance under chapter 6 with respect to the project for which the grant was awarded.

(n) Congressional Notification.-

(1) Notification.-

(A) In general.-At least 60 days before making a grant for a project under this section, the Secretary shall notify, in writing, the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate of the proposed grant. The notification shall include an evaluation and justification for the project and the amount of the proposed grant award.

(B) Multimodal projects.-In addition to the notice required under subparagraph (A), the Secretary shall notify the Committee on Commerce, Science, and Transportation of the Senate before making a grant for a project described in subsection (d)(1)(A)(iii).

(2) Congressional disapproval.-The Secretary may not make a grant or any other obligation or commitment to fund a project under this section if a joint resolution is enacted disapproving funding for the project before the last day of the 60-day period described in paragraph (1).

(o) APPLICANT NOTIFICATION.—

(1) IN GENERAL.—Not later than 60 days¹⁴ after the date on which a grant recipient for a project under this section is selected, the Secretary shall provide to each eligible applicant not selected for that grant a written notification that the eligible applicant was not selected.

(2) INCLUSION.—A written notification under paragraph (1) shall include an offer for a written or telephonic debrief by the Secretary that will provide—

(A) detail on the evaluation of the application of the eligible applicant; and

(B) an explanation of and guidance on the reasons the application was not selected for a grant under this section.

(3) RESPONSE.—

(A) IN GENERAL.—Not later than 30 days after the eligible applicant receives a written notification under paragraph (1), if the eligible applicant opts to receive a debrief described in paragraph (2), the eligible applicant shall notify the Secretary that the eligible applicant is requesting a debrief.

(B) DEBRIEF.—If the eligible applicant submits a request for a debrief under subparagraph (A), the Secretary shall provide the debrief by not later than 60 days after the date on which the Secretary receives the request for a debrief.

(p) REPORTS.—

(1) ANNUAL REPORT.—

(A) IN GENERAL.—Notwithstanding any other provision of law, not later than 30 days after the date on which the Secretary selects a project for funding under this section, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that describes the reasons for selecting the project, based on any criteria established by the Secretary in accordance with this section.

(B) INCLUSIONS.—The report submitted under subparagraph (A) shall specify each criterion established by the Secretary that the project meets.

(C) AVAILABILITY.—The Secretary shall make available on the website of the Department of Transportation the report submitted under subparagraph (A).

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(D) APPLICABILITY.—This paragraph applies to all projects described in subparagraph (A) that the Secretary selects on or after January 1, 2019.

(2) COMPTROLLER GENERAL.—

(A) ASSESSMENT.—The Comptroller General of the United States shall conduct an assessment of the establishment, solicitation, selection, and justification process with respect to the funding of projects under this section.

(B) REPORT.—Not later than 1 year after the date of enactment of the America's Transportation Infrastructure Act of 2019 and annually thereafter, the Comptroller General of the United States shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that describes, for each project selected to receive funding under this section—

(i) the process by which each project was selected;

(ii) the factors that went into the selection of each project; and

(iii) the justification for the selection of each project based on any criteria established by the Secretary in accordance with this section.

(3) INSPECTOR GENERAL.—Not later than 20 year after the date of enactment of the America's Transportation Infrastructure Act of 2019 and annually thereafter, the Inspector General of the Department of Transportation shall—

(A) conduct an assessment of the establishment, solicitation, selection, and justification process with respect to the funding of projects under this section; and

(B) submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a final report that describes the findings of the Inspector General of the Department of Transportation with respect to the assessment conducted under subparagraph (A).

(q) STATE INCENTIVES PILOT PROGRAM.—

(1) ESTABLISHMENT.—There is established a pilot program to award grants to eligible applicants for projects eligible for grants under this section (referred to in this subsection as the 'pilot program').

(2) PRIORITY.—In awarding grants under the pilot program, the Secretary shall give priority to an application that offers a greater non-Federal share of the cost of a project relative to other applications under the pilot program.

(3) FEDERAL SHARE.—

(A) IN GENERAL.—Notwithstanding any other provision of law, the Federal share of the cost of a project assisted with a grant under the pilot program may not exceed 50 percent.

(B) NO FEDERAL INVOLVEMENT.—

(i) IN GENERAL.—For grants awarded under the pilot program, except as provided in clause (ii), an eligible applicant may not use Federal assistance to satisfy the non-Federal share of the cost under subparagraph (A).

(ii) EXCEPTION.—An eligible applicant may use funds from a secured loan (as defined in section 601(a)) to satisfy the non-Federal share of the cost under subparagraph (A) if the loan is repayable from non-Federal funds.

(4) RESERVATION.—

(A) IN GENERAL.—Of the amounts made available to provide grants under this section, the Secretary shall reserve for each fiscal year \$150,000,000 to provide grants under the pilot program.

(B) UNUTILIZED AMOUNTS.—In any fiscal year during which applications under this subsection are insufficient to effect an award or allocation of the entire amount reserved

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under subparagraph (A), the Secretary shall use the unutilized amounts to provide other grants under this section.

(5) SET-ASIDES.—

(A) SMALL PROJECTS.—

(i) IN GENERAL.—Of the amounts reserved under paragraph (4)(A), the Secretary shall reserve for each fiscal year not less than 10 percent for projects eligible for a grant under subsection (e).

(ii) REQUIREMENT.—For a grant awarded from the amount reserved under clause (i)—

(I) the requirements of subsection (e) shall apply; and

(II) the requirements of subsection (g) shall not apply.

(B) RURAL PROJECTS.—

(i) IN GENERAL.—Of the amounts reserved under paragraph (4)(A), the Secretary shall reserve for each fiscal year not less than 25 percent for projects eligible for a grant under subsection (i).

(ii) REQUIREMENT.—For a grant awarded from the amount reserved under clause (i), the requirements of subsection (i) shall apply.

(6) REPORT TO CONGRESS.—Not later than 2 years after the date of enactment of this subsection, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that describes the administration of the pilot program, including—

(A) the number, types, and locations of eligible applicants that have applied for grants under the pilot program;

(B) the number, types, and locations of grant recipients under the pilot program;

(C) an assessment of whether implementation of the pilot program has incentivized eligible applicants to offer a greater non-Federal share for grants under the pilot program; and

(D) any recommendations for modifications to the pilot program.'

(b) EFFICIENT USE OF NON-FEDERAL FUNDS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, in the case of a grant described in paragraph (2), section 117(k) of title 23, United States Code, shall apply to the grant as if the grant was a grant provided under that section.

(2) GRANT DESCRIBED.—A grant referred to in paragraph (1) is a grant that is—

(A) provided under a competitive discretionary grant program administered by the Federal Highway Administration;

(B) for a project eligible under title 23, United States Code; and

(C) in an amount greater than \$5,000,000.'

~~(p) Reports.—~~

~~(1) Annual report.—The Secretary shall make available on the Web site of the Department of Transportation at the end of each fiscal year an annual report that lists each project for which a grant has been provided under this section during that fiscal year.~~

~~(2) Comptroller general.—~~

~~(A) Assessment.—The Comptroller General of the United States shall conduct an assessment of the administrative establishment, solicitation, selection, and justification process with respect to the funding of grants under this section.~~

~~(B) Report.—Not later than 1 year after the initial awarding of grants under this section, the Comptroller General shall submit to the Committee on Environment and Public Works of the Senate, the Committee on Commerce, Science, and Transportation of the Senate,~~

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and the Committee on Transportation and Infrastructure of the House of Representatives a
report that describes-

- (i) the adequacy and fairness of the process by which each project was selected, if applicable; and
- (ii) the justification and criteria used for the selection of each project, if applicable.

~~(Added Pub. L. 114-94, div. A, title I, §1105(a), Dec. 4, 2015, 129 Stat. 1332.)~~

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