

AMENDMENT TO H.R. 7
OFFERED BY MR. NADLER OF NEW YORK AND
MR. LIPINSKI OF ILLINOIS

At the end of subtitle D of title I of the bill, add the following (and conform the table of contents accordingly):

1 **SEC. 1405. PROJECTS OF NATIONAL SIGNIFICANCE PRO-**
2 **GRAM.**

3 (a) **ESTABLISHMENT.**—The Secretary shall establish
4 a program to provide grants to States for projects of na-
5 tional significance.

6 (b) **PURPOSES.**—The purposes of the projects of na-
7 tional significance program shall be to—

8 (1) provide Federal assistance to critical high-
9 cost transportation infrastructure facilities that—

10 (A) generate national economic and mobil-
11 ity benefits, including improving economic pro-
12 ductivity by facilitating international trade, re-
13 lieving congestion, and improving transpor-
14 tation safety by facilitating freight movement;
15 and

1 (B) can not easily be addressed or funded
2 through State apportionments of Federal sur-
3 face transportation funds; and

4 (2) maximize the benefits of Federal investment
5 in such projects by encouraging States to supple-
6 ment Federal grant assistance with other funding
7 sources and methods of finance.

8 (c) PROJECT COST.—To be eligible for assistance
9 under this section, a project shall have eligible project
10 costs that are reasonably anticipated to equal or exceed
11 the lesser of—

12 (1) \$500,000,000; or

13 (2)(A) in the case of a project located in a sin-
14 gle State, 75 percent of the amount apportioned
15 under chapter 1 of title 23, United States Code, to
16 the State for the most recent fiscal year; or

17 (B) in the case of a project located in more
18 than one State, 75 percent of the greatest amount
19 apportioned under such chapter to any one of such
20 States for the most recent fiscal year.

21 (d) PROJECT TYPE.—

22 (1) IN GENERAL.—To be eligible for assistance
23 under this section, a project shall be a capital
24 project—

1 (A) that is eligible for Federal assistance
2 under title 23, United States Code;

3 (B) for an international bridge or tunnel
4 for which an international entity authorized
5 under Federal or State law is responsible;

6 (C) for a public freight rail facility or a
7 private freight rail facility providing public ben-
8 efit for highway users;

9 (D) for an intermodal freight transfer fa-
10 cility;

11 (E) for a means of access to a facility de-
12 scribed in subparagraph (C) or (D);

13 (F) for a service improvement for a facility
14 described in subparagraph (C) or (D) (including
15 a capital investment for an intelligent transpor-
16 tation system); or

17 (G) that comprises a series of projects de-
18 scribed in subparagraphs (C) through (F) with
19 the common objective of improving the flow of
20 goods.

21 (2) PORT PROJECTS.—A project located within
22 the boundaries of a port terminal may only be eligi-
23 ble for assistance under this section if the project is
24 for such surface transportation infrastructure modi-
25 fications as are necessary to facilitate direct inter-

1 modal interchange, transfer, and access into and out
2 of the port.

3 (e) PROJECT FUNDING.—

4 (1) FUNDING SOURCES.—The non-Federal
5 share of the cost of an eligible project may be fund-
6 ed through a combination of private and public sec-
7 tor funds, including investment of public funds in
8 private sector facility improvements.

9 (2) NEED FOR FEDERAL SUPPORT.—To be eli-
10 gible for assistance under this section, the Secretary
11 must determine, based on information provided by
12 the applicant, that the project cannot be readily and
13 efficiently carried out without Federal support and
14 participation.

15 (3) NON-FEDERAL FINANCIAL COMMITMENT.—

16 (A) IN GENERAL.—To be eligible for as-
17 sistance under this section—

18 (i) a project must be supported by an
19 acceptable degree of non-Federal financial
20 commitments; and

21 (ii) the applicant for such assistance
22 shall demonstrate to the satisfaction of the
23 Secretary one or more stable and depend-
24 able financing sources to construct, main-

1 tain, and operate the infrastructure facility
2 for which the project is to be carried out.

3 (B) EVALUATION OF PROJECT.—For pur-
4 poses of subparagraph (A), the Secretary shall
5 require that—

6 (i) the proposed project plan provides
7 for the availability of contingency amounts
8 that the Secretary determines to be reason-
9 able to cover unanticipated cost increases;
10 and

11 (ii) each proposed non-Federal source
12 of capital and operating financing is stable,
13 reliable, and available within the proposed
14 project timetable.

15 (C) CONSIDERATIONS.—In assessing the
16 stability, reliability, and availability of proposed
17 sources of non-Federal financing under this
18 paragraph, the Secretary shall consider—

19 (i) existing financial commitments;

20 (ii) the degree to which financing
21 sources are dedicated to the purposes pro-
22 posed;

23 (iii) any debt obligation that exists or
24 is proposed by the recipient for the pro-
25 posed project; and

1 (iv) the extent to which the project
2 has a non-Federal financial commitment
3 that exceeds the required non-Federal
4 share of the cost of the project.

5 (f) CONSISTENCY WITH PLANS.—To be eligible for
6 assistance under this section, a project shall be consistent
7 with—

8 (1) for each State in which all or a portion of
9 the project is located, the long-range statewide
10 transportation plan and statewide transportation im-
11 provement program required by section 5204 of title
12 49, United States Code, and the State freight plan
13 under section 1403 of this Act; and

14 (2) for each metropolitan planning area in
15 which all or a portion of the project is located, the
16 transportation plan and transportation improvement
17 program required by section 5203 of such title.

18 (g) APPLICATIONS.—

19 (1) IN GENERAL.—Each State seeking a grant
20 under this section for a project shall submit to the
21 Secretary an application in such form and in accord-
22 ance with such requirements as the Secretary shall
23 establish.

24 (2) APPLICATION FOR MULTISTATE PROJECT.—

25 In the case of a project to be located in more than

1 one State, the application for the project may be
2 submitted by—

3 (A) all of such States, with one State act-
4 ing as the lead for the project; or

5 (B) a multistate transportation authority.

6 (3) COLLABORATION IN DEVELOPING APPLICA-
7 TIONS.—The Secretary shall encourage States, in
8 developing applications to submit under this section,
9 to collaborate with other public and private entities
10 with an interest in the project for which the State
11 is seeking Federal assistance, including regional and
12 local governments, shippers, carriers, and freight-re-
13 lated associations, as appropriate.

14 (h) COMPETITIVE GRANT SELECTION AND CRITERIA
15 FOR GRANTS.—

16 (1) IN GENERAL.—The Secretary shall—

17 (A) establish criteria for selecting among
18 projects that meet the eligibility requirements
19 specified in subsections (c), (d), (e), and (f);

20 (B) conduct a national solicitation for ap-
21 plications; and

22 (C) award grants on a competitive basis.

23 (2) SELECTION CRITERIA.—In selecting a
24 project under this section, the Secretary shall con-
25 sider the extent to which the project—

1 (A) is located within, or will otherwise ben-
2 efitcially impact, a corridor or region that expe-
3 riences high volumes of passenger or freight
4 traffic and related traffic congestion, taking
5 into account—

6 (i) the current and projected future
7 volumes of passenger and freight travel
8 within the corridor or region;

9 (ii) the extent to which freight traffic
10 in the corridor has increased since the date
11 of enactment of the North American Free
12 Trade Agreement Implementation Act (16
13 U.S.C. 4401 et seq.); and

14 (iii) the economic, environmental, and
15 other costs arising from congestion in the
16 corridor or region;

17 (B) is projected to reduce congestion and
18 increase the speed, reliability, and accessibility
19 of freight movement, including impacts in the
20 State, region, and Nation;

21 (C) is projected to generate national eco-
22 nomic benefits, including creating or sustaining
23 jobs, expanding business opportunities, and im-
24 pacting the gross domestic product;

1 (D) will facilitate regional mobility, acces-
2 sibility, and economic growth and development
3 in areas underserved by existing highway infra-
4 structure;

5 (E) is projected to improve transportation
6 safety, including reducing transportation acci-
7 dents, injuries, and fatalities;

8 (F) is projected to otherwise enhance the
9 national transportation system;

10 (G) uses new technologies, including intel-
11 ligent transportation systems, that enhance the
12 efficiency of the project;

13 (H) helps maintain or protect the environ-
14 ment;

15 (I) will be supported by, in addition to
16 Federal grant assistance under this section,
17 other sources of funding and methods of fi-
18 nance, including—

19 (i) any other source of Federal trans-
20 portation funding;

21 (ii) a contribution from a State, re-
22 gional, or local governmental entity or a
23 private organization; and

1 (iii) nongrant assistance, including a
2 loan or other credit assistance or direct
3 user charges.

4 (3) PROJECT EVALUATION AND RATING.—The
5 Secretary shall evaluate and rate, based on the selec-
6 tion criteria described in paragraph (2), each project
7 for which an application is submitted under this sec-
8 tion. In rating the projects, the Secretary shall pro-
9 vide, in addition to the overall project rating, indi-
10 vidual ratings for each of the criteria described in
11 paragraph (2).

12 (i) REGULATIONS.—Not later than 180 days after the
13 date of enactment of this section, the Secretary shall issue
14 regulations to carry out this section.

15 (j) LETTERS OF INTENT, FULL FUNDING GRANT
16 AGREEMENTS, AND EARLY SYSTEM WORK AGREE-
17 MENTS.—

18 (1) LETTER OF INTENT.—

19 (A) IN GENERAL.—The Secretary may
20 issue a letter of intent to an applicant announc-
21 ing an intention to obligate, for a project under
22 this section, an amount from future available
23 budget authority specified in law that is not
24 more than the amount stipulated as the finan-

1 cial participation of the Secretary in the
2 project.

3 (B) TREATMENT.—The issuance of a letter
4 of intent under subparagraph (A) is deemed not
5 to be an obligation under sections 1108(e),
6 1108(d), 1501, and 1502(a) of title 31, United
7 States Code, or an administrative commitment.

8 (C) OBLIGATION OR COMMITMENT.—An
9 obligation or administrative commitment for a
10 project under this section may be made only
11 when contract authority is allocated to the
12 project.

13 (2) FULL FUNDING GRANT AGREEMENTS.—

14 (A) IN GENERAL.—A project financed
15 under this section shall be carried out through
16 a full funding grant agreement entered into by
17 the Secretary and the applicant for the project.
18 The Secretary shall enter into a full funding
19 grant agreement under this subsection based on
20 the evaluations and ratings required under sub-
21 section (h)(3).

22 (B) TERMS.—If the Secretary makes a full
23 funding grant agreement with an applicant, the
24 agreement shall—

1 (i) establish the terms of participation
2 by the United States Government in a
3 project under this section;

4 (ii) establish the maximum amount of
5 Government financial assistance for the
6 project;

7 (iii) cover the period of time for com-
8 pleting the project, including, if necessary,
9 a period extending beyond the period of an
10 authorization;

11 (iv) make timely and efficient man-
12 agement of the project easier according to
13 the laws of the United States; and

14 (v) identify quantifiable performance
15 outcomes that the project must achieve by
16 not later than 2 years subsequent to the
17 date of substantial completion of the
18 project, including outcomes related to the
19 program objectives and any budgetary or
20 project development milestones or objec-
21 tives that the Secretary may specify.

22 (C) SPECIAL FINANCIAL RULES.—

23 (i) IN GENERAL.—A full funding
24 grant agreement under this paragraph ob-
25 ligates an amount of available budget au-

1 thority specified in law and may include a
2 commitment, contingent on amounts to be
3 specified in law in advance for commit-
4 ments under this paragraph, to obligate an
5 additional amount from future available
6 budget authority specified in law.

7 (ii) STATEMENT OF CONTINGENT
8 COMMITMENT.—The agreement shall state
9 that the contingent commitment is not an
10 obligation of the Government.

11 (iii) INTEREST AND OTHER FINANC-
12 ING COSTS.—Interest and other financing
13 costs of efficiently carrying out a part of
14 the project within a reasonable time shall
15 be eligible project costs under a full fund-
16 ing grant agreement; except that eligible
17 costs may not be more than the cost of the
18 most favorable financing terms reasonably
19 available for the project at the time of bor-
20 rowing. The applicant shall certify, in a
21 way satisfactory to the Secretary, that the
22 applicant has shown reasonable diligence in
23 seeking the most favorable financing
24 terms.

25 (D) BEFORE AND AFTER STUDY.—

1 (i) IN GENERAL.—A full funding
2 grant agreement under this paragraph
3 shall require the applicant to conduct a
4 study that—

5 (I) describes and analyzes the
6 impact of the project in relation to the
7 program purposes;

8 (II) evaluates the degree to which
9 the project has met its performance
10 outcomes; and

11 (III) provides a rationale for any
12 instance in which the project did not
13 meet one or more performance out-
14 comes.

15 (ii) INFORMATION COLLECTION AND
16 ANALYSIS PLAN.—

17 (I) SUBMISSION OF PLAN.—Ap-
18 plicants seeking a full funding grant
19 agreement under this paragraph shall
20 submit a complete plan for the collec-
21 tion and analysis of information to
22 identify the impacts of the project in
23 relation to program objectives and the
24 project's performance outcomes. Prep-
25 aration of the plan shall be an eligible

1 project cost under the full funding
2 grant agreement.

3 (II) CONTENTS OF PLAN.—The
4 plan submitted under subclause (I)
5 shall provide for—

6 (aa) the collection of data on
7 the current performance of the
8 portion of the surface transpor-
9 tation network that is likely to be
10 impacted by the project;

11 (bb) documentation of the
12 predicted impacts of the project
13 in relation to program purposes
14 and the project's performance
15 outcomes;

16 (cc) collection of data on the
17 relevant portion of the surface
18 transportation network 2 years
19 after the date of substantial com-
20 pletion of the project, including
21 information analogous to that de-
22 scribed in item (aa); and

23 (dd) analysis of the consist-
24 ency of predicted project out-
25 comes with the after data.

1 (E) COLLECTION OF DATA ON CURRENT
2 SYSTEM.—To be eligible for a full funding
3 grant agreement under this paragraph, the re-
4 cipient shall have collected data on the current
5 system, according to the plan required, before
6 the beginning of construction of the proposed
7 project. Collection of this data shall be an eligi-
8 ble project cost under the full funding grant
9 agreement.

10 (3) EARLY SYSTEM WORK AGREEMENTS.—

11 (A) CONDITIONS.—The Secretary may
12 make an early systems work agreement with an
13 applicant if a record of decision under the Na-
14 tional Environmental Policy Act of 1969 (42
15 U.S.C. 4321 et seq.) has been issued on the
16 project and the Secretary finds there is reason
17 to believe a full funding grant agreement for
18 the project will be made.

19 (B) CONTENTS.—

20 (i) IN GENERAL.—A work agreement
21 under this subsection obligates an amount
22 of available budget authority specified in
23 law and shall provide for reimbursement of
24 preliminary costs of carrying out the
25 project, including land acquisition, timely

1 procurement of system elements for which
2 specifications are decided, and other activi-
3 ties the Secretary decides are appropriate
4 to make efficient, long-term project man-
5 agement easier.

6 (ii) PERIOD COVERED.—A work
7 agreement under this paragraph shall
8 cover the period of time the Secretary con-
9 siders appropriate. The period may extend
10 beyond the period of current authorization.

11 (iii) INTEREST AND OTHER FINANC-
12 ING COSTS.—Interest and other financing
13 costs of efficiently carrying out the work
14 agreement within a reasonable time shall
15 be eligible project costs under the agree-
16 ment; except that eligible costs may not be
17 more than the cost of the most favorable
18 financing terms reasonably available for
19 the project at the time of borrowing. The
20 applicant shall certify, in a way satisfac-
21 tory to the Secretary, that the applicant
22 has shown reasonable diligence in seeking
23 the most favorable financing terms.

24 (iv) FAILURE TO CARRY OUT
25 PROJECT.—If an applicant does not carry

1 out the project for reasons within the con-
2 trol of the applicant, the applicant shall
3 repay all Government payments made
4 under the work agreement plus reasonable
5 interest and penalty charges the Secretary
6 establishes in the agreement.

7 (4) LIMITATION ON AMOUNTS.—The total esti-
8 mated amount of future obligations of the Govern-
9 ment and contingent commitments to incur obliga-
10 tions covered by all outstanding letters of intent, full
11 funding grant agreements, and early system work
12 agreements under this subsection for projects of na-
13 tional significance may be not more than the greater
14 of the amount authorized to carry out this section
15 for such projects or an amount equivalent to the last
16 3 fiscal years of funding authorized to carry out this
17 section, less an amount the Secretary reasonably es-
18 timates is necessary for grants under this section for
19 such projects that are not covered by a letter or
20 agreement. The total amount covered by new letters
21 and contingent commitments included in full funding
22 grant agreements and early systems work agree-
23 ments for such projects may be not more than a lim-
24 itation specified in law.

1 (5) NOTIFICATION.—At least 10 days before
2 issuing a letter under paragraph (1) and at least 21
3 days before entering into a full funding grant agree-
4 ment under paragraph (2), the Secretary shall notify
5 in writing the Committee on Transportation and In-
6 frastructure of the House of Representatives and the
7 Committee on Environment and Public Works and
8 the Committee on Commerce, Science, and Trans-
9 portation of the Senate of the proposed letter or
10 agreement. The Secretary shall include with the no-
11 tification a copy of the proposed letter or agreement
12 as well as the evaluations and ratings for the
13 project.

14 (k) GRANT REQUIREMENTS.—

15 (1) IN GENERAL.—A grant for a project under
16 this section shall be subject to the requirements of
17 title 23, United States Code.

18 (2) OTHER TERMS AND CONDITIONS.—In addi-
19 tion to the requirements under paragraph (1), the
20 Secretary shall require that all grants under this
21 section be subject to any other terms, conditions,
22 and requirements that the Secretary decides are nec-
23 essary or appropriate for purposes of this section.

24 (l) GOVERNMENT'S SHARE OF PROJECT COST.—

1 (1) IN GENERAL.—Based on engineering stud-
2 ies, studies of economic feasibility, and information
3 on the expected use of equipment or facilities, the
4 Secretary shall estimate the cost of a project receiv-
5 ing assistance under this section. A grant for the
6 project is for 80 percent of the project cost, unless
7 the grant recipient requests a lower grant percent-
8 age.

9 (2) REMAINDER OF NET PROJECT COST.—If
10 the Secretary determines that the originally defined
11 project is completed at a cost that is significantly
12 below the original estimate, the Secretary shall—

13 (A) refund to the Government the propor-
14 tion of the remainder equal to the proportional
15 share of the original project cost funded by
16 Federal assistance under this section; and

17 (B) authorize the project sponsor to use
18 any additional remainder for any activity eligi-
19 ble to receive Federal assistance under this title
20 or chapter 53 of title 49, United States Code.

21 (m) FISCAL CAPACITY CONSIDERATIONS.—If the
22 Secretary gives priority consideration to financing projects
23 that include more than the non-Government share re-
24 quired under subsection (l) the Secretary shall give equal

1 consideration to differences in the fiscal capacity of State
2 and local governments.

3 (n) TRANSFER OF FUNDS TO THE GENERAL SERV-
4 ICES ADMINISTRATION.—

5 (1) STATE FUNDS.—At the request of a border
6 State, funds provided to a State under this section
7 may be transferred to the General Services Adminis-
8 tration for the purpose of funding a project of na-
9 tional significance under this section if—

10 (A) the Secretary determines, after con-
11 sultation with the transportation department of
12 the border State, that the General Services Ad-
13 ministration should carry out the project; and

14 (B) the General Services Administration
15 agrees to accept the transfer of, and to admin-
16 ister, those funds in accordance with this sec-
17 tion.

18 (2) NON-FEDERAL SHARE.—

19 (A) IN GENERAL.—A border State that
20 makes a request under paragraph (1) shall pro-
21 vide directly to the General Services Adminis-
22 tration the non-Federal share of the cost of the
23 eligible project.

1 (B) NO AUGMENTATION OF APPROPRIA-
2 TIONS.—Funds provided by a border State
3 under subparagraph (A)—

4 (i) shall not be considered to be an
5 augmentation of the appropriations made
6 available to the General Services Adminis-
7 tration; and

8 (ii) shall be—

9 (I) administered, subject to para-
10 graph (1)(B), in accordance with the
11 procedures of the General Services
12 Administration; but

13 (II) available for obligation in the
14 same manner as if the funds were ap-
15 portioned under chapter 1 of title 23,
16 United States Code.

17 (3) OBLIGATION AUTHORITY.—Obligation au-
18 thority shall be transferred to the General Services
19 Administration for a project in the same manner
20 and amount as the funds provided for the project
21 under paragraph (1).

22 (o) REVIEW AND REPORTS.—

23 (1) ANNUAL REPORT ON PROJECTS.—Not later
24 than the first Monday in February of each year, the
25 Secretary shall submit to the Committee on Trans-

1 portation and Infrastructure of the House of Rep-
2 representatives and the Committee on Environment and
3 Public Works and the Committee on Commerce,
4 Science, and Transportation of the Senate a report
5 on projects that the Secretary has funded, or pro-
6 poses to fund, under this section. The annual report
7 under this paragraph shall include—

8 (A) project evaluations and ratings, as re-
9 quired under subsection (h); and

10 (B) such recommendations as the Sec-
11 retary may have for improvements to the pro-
12 gram authorized by this section.

13 (2) BEFORE AND AFTER STUDY REPORTS.—

14 Not later than the first Monday of August of each
15 year, the Secretary shall submit to the committees
16 referred to in paragraph (1) a report containing a
17 summary of the results of the studies conducted
18 under subsection (j)(2)(D) that were completed dur-
19 ing the preceding year.

20 (p) AUTHORIZATION OF APPROPRIATIONS.—There is
21 authorized to be appropriated from the Highway Trust
22 Fund (other than the Alternative Transportation Account)
23 to carry out this section \$2,500,000,000 for each of fiscal
24 years 2013 through 2016.

1 (q) APPLICABILITY OF CHAPTER 1.—Funds made
2 available to carry out this section shall be available for
3 obligation and administered in the same manner as if such
4 funds were apportioned under chapter 1 of title 23, United
5 States Code, except that such funds shall remain available
6 until expended.

7 (r) DEFINITIONS.—In this section, the following defi-
8 nitions apply:

9 (1) BORDER STATE.—The term “border State”
10 means any State that has an international land bor-
11 der with Canada or Mexico.

12 (2) ELIGIBLE PROJECT COSTS.—The term “eli-
13 gible project costs” means the costs of—

14 (A) development phase activities, including
15 planning, feasibility analysis, revenue fore-
16 casting, environmental review, engineering and
17 design work, and other preconstruction activi-
18 ties;

19 (B) construction, reconstruction, rehabili-
20 tation, and acquisition of real property (includ-
21 ing land related to the project and improve-
22 ments to land), environmental mitigation, con-
23 struction contingencies, acquisition of equip-
24 ment, and operational improvements; and

1 (C) the collection and analysis of data re-
2 lated to the projected and actual impacts of the
3 project.

4 (3) ELIGIBLE PROJECT.—The term “eligible
5 project” means a project that is eligible for assist-
6 ance under subsections (c), (d), (e), and (f).

7 (4) METROPOLITAN PLANNING AREA.—The
8 term “metropolitan planning area” has the meaning
9 such term has in section 5202 of title 49, United
10 States Code.

11 (5) MULTISTATE TRANSPORTATION AUTHOR-
12 ITY.—The term “multistate transportation author-
13 ity” means any public transportation authority es-
14 tablished through an interstate compact between 2
15 or more States.

16 (6) PROGRAM PURPOSES.—The term “program
17 purposes” means the purposes set forth in sub-
18 section (b).

19 (7) PROJECT OF NATIONAL SIGNIFICANCE.—
20 The term “project of national significance” means a
21 project funded under this section.



