

110TH CONGRESS
2D SESSION

S. 3700

To encourage and support the development of high-speed passenger rail transportation in the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 19, 2008

Mr. KERRY (for himself, Mr. SPECTER, Mr. LAUTENBERG, Mr. INOUE, Mr. BROWN, Ms. STABENOW, Mrs. FEINSTEIN, Mr. DODD, Mr. CASEY, Mr. LIEBERMAN, Mr. WHITEHOUSE, Mrs. CLINTON, Mr. SCHUMER, Ms. SNOWE, Mr. MENENDEZ, and Mr. CARPER) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To encourage and support the development of high-speed passenger rail transportation in the United States, 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 “High-Speed Rail for
5 America Act of 2008”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress makes the following find-
8 ings:

1 (1) Highway congestion, which is increasing
2 every year, annually costs our Nation's economy
3 \$78,000,000,000, 2,900,000,000 gallons of wasted
4 fuel, and 4,200,000,000 lost hours of productivity.

5 (2) High-speed rail travel, which can be more
6 reliable than air travel, could potentially reduce trav-
7 el time by 30 percent, compared with air travel, for
8 passengers traveling between 100 and 500 miles
9 from city center to city center.

10 (3) Several European Union countries spend as
11 much as 20 times more than the United States
12 spends, per capita, on intercity rail.

13 (4) Rail travel could potentially reduce the ef-
14 fect of greenhouse gas emissions generated by travel
15 between cities that are between 100 and 500 miles
16 apart—

17 (A) by 80 percent compared with air-
18 planes; and

19 (B) by 21 percent compared with auto-
20 mobiles.

21 (5) Rail travel, which is significantly safer than
22 travel by automobile, has a fatality rate per pas-
23 senger mile traveled that is 96 percent less than the
24 rate for automobile travel.

25 (b) PURPOSE.—The purposes of this Act are to—

1 (1) provide for the development of world-class,
2 high-speed passenger rail transportation in the
3 United States; and

4 (2) provide a constant and reliable source of
5 funding for high-speed passenger rail and intercity
6 passenger rail in the form of tax-exempt bonds and
7 tax credit bonds in order to—

8 (A) reduce nonrail traffic congestion;

9 (B) reduce greenhouse gas emissions; and

10 (C) provide alternative modes or transpor-
11 tation between city centers.

12 **SEC. 3. HIGH-SPEED PASSENGER RAIL PROGRAM.**

13 Chapter 261 of title 49, United States Code, is
14 amended—

15 (1) in the chapter analysis, by adding at the
16 end the following:

“26107. Office of High-Speed Passenger Rail.”;

17 and

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

19 **“§ 26107. Office of High-Speed Passenger Rail**

20 “(a) ESTABLISHMENT.—There is established, within
21 the Federal Railroad Administration, the Office of High-
22 Speed Passenger Rail, which shall be headed by the Asso-
23 ciate Administrator for High-Speed Rail.

24 “(b) FUNCTIONS.—The Office shall—

1 “(1) assume responsibility for all high-speed
2 rail activities carried out by the Office of Railroad
3 Development before the date of the enactment of the
4 High-Speed Rail for America Act of 2008; and

5 “(2) consult with the Secretary of Transpor-
6 tation to assist eligible entities to—

7 “(A) finance qualified high-speed intercity
8 rail facility projects through bonds issued in ac-
9 cordance with section 54F or 142(i) of the In-
10 ternal Revenue Code of 1986; and

11 “(B) understand the procedures and cri-
12 teria for submitting applications for financial
13 assistance for such projects.

14 “(c) CONSULTATION.—The Secretary of Transpor-
15 tation, working through the Office, shall consult with the
16 Secretary of Homeland Security and the Secretary of De-
17 fense to understand how high-speed rail can benefit the
18 Nation’s infrastructure in times of emergency and
19 prioritize which corridors will prove most beneficial if
20 other modes of transportation are compromised or not
21 available or large numbers of people must be moved quick-
22 ly in an emergency.

23 “(d) STAFF.—In addition to employees of the Federal
24 Railroad Administration, the Associate Administrator, in
25 consultation with the Administrator, may, by agreement,

1 on a reimbursable basis or otherwise, utilize the personnel
2 services, equipment, and facilities of any other Federal
3 agency in administering the program. Each individual de-
4 tailed to the Office from another department or agency
5 shall report to a supervisor in the Office, who shall be re-
6 sponsible for the performance evaluation of such
7 detailee.”.

8 **SEC. 4. AUTHORIZATION OF APPROPRIATIONS.**

9 (a) IN GENERAL.—There are authorized to be appro-
10 priated to the Secretary of Transportation \$15,000,000
11 for each of the fiscal years 2009 through 2014, for the
12 operation of the Office of High-Speed Passenger Rail es-
13 tablished under section 26107 of title 49, United States
14 Code.

15 (b) APPROPRIATED FUNDS REMAIN AVAILABLE.—
16 Amounts appropriated pursuant to subsection (a) for any
17 fiscal year shall remain available until expended.

18 **SEC. 5. PRIVATE ACTIVITY BONDS FOR HIGH-SPEED RAIL.**

19 (a) IN GENERAL.—Subsection (i) of section 142 of
20 the Internal Revenue Code of 1986 (relating to exempt
21 facility bond) is amended to read as follows:

22 “(i) QUALIFIED HIGH-SPEED INTERCITY RAIL FA-
23 CILITY PROJECTS.—

24 “(1) IN GENERAL.—For purposes of subsection
25 (a)(11), the term ‘qualified high-speed intercity rail

1 facility project’ means a project for a high-speed
2 intercity rail facility which the Secretary determines,
3 after consultation with the Secretary of Transpor-
4 tation—

5 “(A) satisfies the criteria described in sec-
6 tion 26106(e)(2) of title 49, United States
7 Code, and

8 “(B) makes a substantial contribution to
9 improving a rail transportation corridor for
10 high-speed passenger rail use.

11 “(2) HIGH-SPEED INTERCITY RAIL FACILITY.—

12 For purposes of this subsection, the term ‘high-
13 speed intercity rail facility’ means any facility used
14 in conjunction with high-speed rail (as defined in
15 section 26106(b)(4) of title 49, United States Code).

16 “(3) AGGREGATE FACE AMOUNT OF TAX-EX-
17 EMPT FINANCING.—

18 “(A) IN GENERAL.—An issue shall not be
19 treated as an issue described in subsection
20 (a)(11) if the aggregate face amount of bonds
21 issued pursuant to such issue for a project
22 (when added to the aggregate face amount of
23 bonds previously so issued for such project) ex-
24 ceeds an amount allocated by the Secretary for

1 such project as part of the designation of such
2 project under paragraph (1).

3 “(B) LIMITATION ON AMOUNT OF
4 BONDS.—The Secretary may not allocate au-
5 thority to issue bonds for qualified high-speed
6 intercity rail projects in an aggregate face
7 amount exceeding \$8,000,000,000.

8 “(4) ELECTION BY NONGOVERNMENTAL OWN-
9 ERS.—A project shall be treated as described in sub-
10 section (a)(11) only if any owner of such project
11 which is not a governmental unit irrevocably elects
12 not to claim—

13 “(A) any deduction under section 167 or
14 168, and

15 “(B) any credit under this subtitle,
16 with respect to the property to be financed by the
17 net proceeds of the issue.

18 “(5) USE OF PROCEEDS.—A bond issued as
19 part of an issue described in subsection (a)(11) shall
20 not be considered an exempt facility bond unless any
21 net proceeds not used within the 5-year period be-
22 ginning on the date of the issuance of such bond are
23 used (not later than 6 months after the close of such
24 period) to redeem bonds which are part of such
25 issue.

1 “(6) CONDITIONS.—Any project for which
2 bonds were issued under subsection (a)(11) shall be
3 subject to the grant requirements under section
4 24405 of title 49, United States Code.”.

5 (b) EXEMPTION FROM STATE VOLUME CAP.—Sec-
6 tion 146(g) of the Internal Revenue Code of 1986 (relat-
7 ing to exception for certain bonds) is amended—

8 (1) by adding “and” at the end of paragraph
9 (2),

10 (2) by inserting “(11),” after “(2),” in para-
11 graph (3), and

12 (3) by striking “, and” at the end of paragraph
13 (3) and all that follows through the end of the sub-
14 section and inserting a period.

15 (c) CONFORMING AMENDMENT.—Paragraph (11) of
16 section 142(a) of the Internal Revenue Code of 1986 is
17 amended to read as follows:

18 “(11) qualified high-speed intercity rail facility
19 projects,”.

20 (d) EFFECTIVE DATE.—

21 (1) IN GENERAL.—The amendments made by
22 this section shall apply to any bond issued after the
23 date of the enactment of this Act and on or before
24 the date which is 6 years after such date of enact-
25 ment.

1 (2) APPLICATION OF CODE.—The Internal Rev-
 2 enue Code of 1986 shall be applied and administered
 3 to bonds issued after the date which is 6 years after
 4 the date of the enactment of this Act as if the
 5 amendments described in paragraph (1) had never
 6 been enacted.

7 **SEC. 6. CREDIT TO HOLDERS OF QUALIFIED RAIL BONDS.**

8 (a) IN GENERAL.—Subpart I of part IV of sub-
 9 chapter A of chapter 1 of the Internal Revenue Code of
 10 1986 is amended by adding at the end the following new
 11 section:

12 **“SEC. 54F. CREDIT TO HOLDERS OF QUALIFIED RAIL**
 13 **BONDS.**

14 “(a) QUALIFIED RAIL BOND.—For purposes of this
 15 subpart, the term ‘qualified rail bond’ means—

16 “(1) any qualified super high-speed intercity
 17 rail facility bond, and

18 “(2) any qualified rail infrastructure bond.

19 “(b) QUALIFIED SUPER HIGH-SPEED INTERCITY
 20 RAIL FACILITY BOND.—For purposes of this section—

21 “(1) IN GENERAL.—The term ‘qualified super
 22 high-speed intercity rail facility bond’ means any
 23 bond issued as part of an issue if—

24 “(A) the bond is issued by a qualified
 25 issuer pursuant to an allocation by the Sec-

1 retary to such issuer of a portion of the na-
2 tional qualified rail bond limitation under sub-
3 section (f)(1)(A) by not later than the end of
4 the calendar year following the year of such al-
5 location,

6 “(B) 100 percent of the available project
7 proceeds of such issue are to be used for capital
8 expenditures described in paragraph (3) in-
9 curred for one or more qualified super high-
10 speed intercity rail facility projects,

11 “(C) the State designates such bond for
12 purposes of this section and the bond is in reg-
13 istered form, and

14 “(D) in lieu of the requirements of section
15 54A(d)(2), the issue meets the requirements of
16 subsection (g).

17 “(2) QUALIFIED SUPER HIGH-SPEED INTERCITY
18 RAIL FACILITY PROJECT.—

19 “(A) IN GENERAL.—The term ‘qualified
20 super high-speed intercity rail facility project’
21 means a project for a super high-speed intercity
22 rail facility which—

23 “(i) the Secretary determines, after
24 consultation with the Secretary of Trans-
25 portation—

1 “(I) satisfies the criteria de-
2 scribed in section 26106(e)(2) of title
3 49, United States Code, and

4 “(II) makes a substantial con-
5 tribution to improving a high-speed
6 rail transportation corridor for inter-
7 city passenger rail use, and

8 “(ii) the Secretary designates as a
9 qualified super high-speed intercity rail fa-
10 cility project.

11 “(B) REQUIREMENTS FOR PROJECT DES-
12 IGNATION.—

13 “(i) IN GENERAL.—A project may not
14 be designated by the Secretary under sub-
15 paragraph (A) as a qualified super high-
16 speed intercity rail facility project unless—

17 “(I) the passenger service pro-
18 vided by the project is over rail track
19 dedicated for such service,

20 “(II) the project does not include
21 any at-grade rail crossings, and

22 “(III) all Federal environmental
23 review processes have been completed
24 at the time of the designation.

1 “(ii) WAIVER OF CERTAIN REQUIRE-
2 MENTS.—The Secretary, after consultation
3 with the Secretary of Transportation, may
4 waive subclauses (I) and (II) of clause (i),
5 in the designation of any qualified super
6 high-speed intercity rail facility project, if
7 the Secretary determines that it is in the
8 public interest and is not inconsistent with
9 the purposes of this section.

10 “(iii) EXCEPTION FOR EXISTING
11 HIGH-SPEED RAIL CORRIDORS.—Clause (i)
12 shall not apply in the case of any project
13 to enhance any railroad providing high-
14 speed passenger rail transportation as of
15 the date of the enactment of the High-
16 Speed Rail for America Act of 2008, if
17 such railroad is capable of operating
18 speeds of at least 150 miles per hour on
19 such date.

20 “(C) SUPER HIGH-SPEED INTERCITY RAIL
21 FACILITY.—For purposes of this paragraph, the
22 term ‘super high-speed intercity rail facility’
23 means any facility used in conjunction with an
24 intercity passenger rail service that is reason-

1 ably expected to operate at speeds of at least
2 150 miles per hour.

3 “(3) CAPITAL EXPENDITURES.—For purposes
4 of paragraph (1)(B), the term ‘capital expenditures’
5 means—

6 “(A) expenditures related to the develop-
7 ment and operation of high-speed rail infra-
8 structure for acquiring, constructing, or improv-
9 ing equipment, track, track structures, and
10 rights-of-way,

11 “(B) payments for the capital portion of
12 rail trackage rights agreements,

13 “(C) highway-rail grade crossing improve-
14 ments, separations, and closures,

15 “(D) communication and signal improve-
16 ments, and

17 “(E) other expenditures related to high-
18 speed rail service.

19 “(c) QUALIFIED RAIL INFRASTRUCTURE BOND.—
20 For purposes of this section—

21 “(1) IN GENERAL.—The term ‘qualified rail in-
22 frastructure bond’ means any bond issued as part of
23 an issue if—

24 “(A) the bond is issued by a qualified
25 issuer pursuant to an allocation by the Sec-

1 retary to such issuer of a portion of the na-
2 tional qualified rail bond limitation under sub-
3 section (f)(1)(B) by not later than the end of
4 the calendar year following the year of such al-
5 location,

6 “(B) 100 percent of the available project
7 proceeds of such issue are to be used for capital
8 expenditures incurred for one or more qualified
9 rail infrastructure projects,

10 “(C) the qualified issuer designates such
11 bond for purposes of this section and the bond
12 is in registered form, and

13 “(D) in lieu of the requirements of section
14 54A(d)(2), the issue meets the requirements of
15 subsection (g).

16 “(2) QUALIFIED RAIL INFRASTRUCTURE
17 PROJECT.—The term ‘qualified rail infrastructure
18 project’ means a project eligible under subsection (b)
19 of section 26101 of title 49, United States Code (de-
20 termined without regard to paragraph (2) thereof),
21 based on the criteria of subsection (c) of such sec-
22 tion, which the Secretary determines, after consulta-
23 tion with the Secretary of Transportation, makes a
24 substantial contribution to improving a rail trans-
25 portation corridor for intercity passenger rail use.

1 “(d) SPECIAL USE RULES.—For purposes of sub-
2 section (b)(1)(B) or (c)(1)(B)—

3 “(1) REFINANCING RULES.—A qualified project
4 may be refinanced with proceeds of a qualified rail
5 bond only if the indebtedness being refinanced (in-
6 cluding any obligation directly or indirectly refi-
7 nanced by such indebtedness) was originally incurred
8 after the date of the enactment of this section.

9 “(2) REIMBURSEMENT.—A qualified rail bond
10 may be issued to reimburse for amounts paid after
11 the date of the enactment of this section with re-
12 spect to a qualified project, but only if—

13 “(A) prior to the payment of the original
14 expenditure, the issuer declared its intent to re-
15 imburse such expenditure with the proceeds of
16 a qualified rail bond,

17 “(B) not later than 60 days after payment
18 of the original expenditure, the issuer adopts an
19 official intent to reimburse the original expendi-
20 ture with such proceeds, and

21 “(C) the reimbursement is made not later
22 than 18 months after the date the original ex-
23 penditure is paid.

24 “(3) TREATMENT OF CHANGES IN USE.—The
25 proceeds of an issue shall not be treated as used for

1 a qualified project to the extent that an issuer takes
2 any action within its control which causes such pro-
3 ceeds not to be used for such project. The Secretary
4 shall prescribe regulations specifying remedial ac-
5 tions that may be taken (including conditions to tak-
6 ing such remedial actions) to prevent an action de-
7 scribed in the preceding sentence from causing a
8 bond to fail to be a qualified rail bond.

9 “(e) MATURITY LIMITATIONS.—In lieu of section
10 54A(d)(5), a bond shall not be treated as a qualified rail
11 bond if the maturity of such bond exceeds—

12 “(1) in the case of a qualified super high-speed
13 intercity rail facility bond, 20 years, and

14 “(2) in the case of a qualified rail infrastruc-
15 ture bond, 15 years.

16 “(f) NATIONAL LIMITATION ON AMOUNT OF BONDS
17 DESIGNATED.—

18 “(1) IN GENERAL.—There is a national quali-
19 fied rail bond limitation of—

20 “(A) in the case of qualified super high-
21 speed intercity rail facility bonds,
22 \$10,000,000,000, and

23 “(B) in the case of qualified rail infra-
24 structure bonds, \$5,400,000,000.

1 “(2) ALLOCATION BY SECRETARY.—The na-
2 tional qualified rail bond limitation shall be allocated
3 by the Secretary (in the case of qualified super high-
4 speed intercity rail facility bonds, after consultation
5 with the Secretary of Transportation) among quali-
6 fied projects in such manner as the Secretary deter-
7 mines appropriate.

8 “(g) SPECIAL RULES RELATING TO EXPENDI-
9 TURES.—

10 “(1) IN GENERAL.—An issue shall be treated as
11 meeting the requirements of this subsection if, as of
12 the date of issuance, the issuer reasonably expects—

13 “(A) 100 percent or more of the available
14 project proceeds of the issue are to be spent for
15 1 or more qualified projects within the 5-year
16 period beginning on the date of issuance of the
17 qualified rail bond,

18 “(B) a binding commitment with a third
19 party to spend at least 10 percent of the avail-
20 able project proceeds of the issue will be in-
21 curred within the 6-month period beginning on
22 the date of issuance of the qualified rail bond,
23 and

1 “(C) such projects will be completed with
2 due diligence and the proceeds from the sale of
3 the issue will be spent with due diligence.

4 “(2) EXTENSION OF PERIOD.—Upon submis-
5 sion of a request prior to the expiration of the period
6 described in paragraph (1)(A), the Secretary may
7 extend such period if the issuer establishes that the
8 failure to satisfy the 5-year requirement is due to
9 reasonable cause and the related projects will con-
10 tinue to proceed with due diligence.

11 “(3) FAILURE TO SPEND REQUIRED AMOUNT
12 OF BOND PROCEEDS WITHIN 5 YEARS.—To the ex-
13 tent that less than 100 percent of the available
14 project proceeds of such issue are expended by the
15 close of the 5-year period beginning on the date of
16 issuance (or if an extension has been obtained under
17 paragraph (2), by the close of the extended period),
18 the issuer shall redeem all of the nonqualified bonds
19 within 90 days after the end of such period. For
20 purposes of this paragraph, the amount of the non-
21 qualified bonds required to be redeemed shall be de-
22 termined in the same manner as under section 142.

23 “(h) SPECIAL RULES RELATING TO POOLED FI-
24 NANCING BONDS.—No portion of a pooled financing bond
25 may be allocable to loan unless the borrower has entered

1 into a written loan commitment for such portion prior to
2 the issue date of such issue.

3 “(i) OTHER DEFINITIONS AND SPECIAL RULES.—

4 For purposes of this section—

5 “(1) POOLED FINANCING BOND.—The term
6 ‘pooled financing bond’ shall have the meaning given
7 such term by section 149(f)(6).

8 “(2) QUALIFIED PROJECT.—The term ‘qualified
9 project’ means a qualified high-speed intercity rail
10 facility project or a qualified rail infrastructure
11 project.

12 “(3) REPORTING.—Issuers of qualified super
13 high-speed intercity rail facility bonds shall submit
14 annual reports to the Secretary and the Secretary of
15 Transportation regarding the progress of qualified
16 super high-speed intercity rail facility projects in
17 such manner determined by the Secretary, after con-
18 sultation with the Secretary of Transportation.

19 “(4) CONDITIONS.—Any project financed with
20 the proceeds of a qualified rail bond shall be subject
21 to the grant requirements under section 24405 of
22 title 49, United States Code.

23 “(j) TERMINATION.—This section shall not apply
24 with respect to—

1 “(1) any qualified super high-speed intercity
2 rail facility bond after December 31, 2014, and

3 “(2) any qualified rail infrastructure bond
4 issued after December 31, 2014.”.

5 (b) CONFORMING AMENDMENTS.—

6 (1) Paragraph (1) of section 54A(d) of the In-
7 ternal Revenue Code of 1986 is amended—

8 (A) by striking “or” at the end of subpara-
9 graph (C),

10 (B) by adding “or” at the end of subpara-
11 graph (D),

12 (C) by inserting after subparagraph (D)
13 the following new subparagraph:

14 “(E) a qualified rail bond,” and

15 (D) by inserting “(paragraphs (3), (4),
16 and (6) in the case of a qualified rail bond)”
17 after “and (6)”.

18 (2) Subparagraph (C) of section 54A(d)(2) of
19 such Code is amended by striking “and” at the end
20 of clause (iii), by striking the period at the end of
21 clause (iv) and inserting “, and”, and by adding at
22 the end the following new clause:

23 “(v) in the case of a qualified rail
24 bond, a purpose specified in subsection
25 (b)(1) or (c)(1) of section 54F.”.

