

116TH CONGRESS
2D SESSION

H. R. 6224

To amend title 23, United States Code, to establish a dedicated, competitive highway-rail grade separation program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 12, 2020

Mr. LIPINSKI introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

To amend title 23, United States Code, to establish a dedicated, competitive highway-rail grade separation 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 “Building Much Needed
5 Rail Grade Separations Act of 2020”.

6 **SEC. 2. GRADE SEPARATION GRANT PROGRAM.**

7 (a) IN GENERAL.—Chapter 1 of title 23, United
8 States Code, is amended by inserting after section 130 the
9 following:

1 **“§ 131. Railway-highway crossing separation program**

2 “(a) DEFINITIONS.—In this section:

3 “(1) CROSSING.—The term ‘crossing’ means a
4 railway-highway grade crossing.

5 “(2) GRADE SEPARATION.—The term ‘grade
6 separation’ means separation of a rail-highway grade
7 crossing through the building of an additional struc-
8 ture such as an overpass, underpass, or trench.

9 “(3) LARGE PROJECT.—The term ‘large
10 project’ means a project funded under this section
11 that has a total eligible project costs of greater than
12 \$100,000,000.

13 “(4) PROGRAM.—The term ‘Program’ means
14 the grade separation investment program established
15 under subsection (b)(1).

16 “(b) ESTABLISHMENT OF GRADE SEPARATION PRO-
17 GRAM.—

18 “(1) IN GENERAL.—The Secretary shall estab-
19 lish a grade separation investment program to pro-
20 vide grants on a competitive basis to carry out ac-
21 tivities described in subsection (h) relating to grade
22 separations.

23 “(2) GOALS.—The goals of the Program shall
24 be—

25 “(A) to separate railway-highway grade
26 crossings;

1 “(B) to improve safety by reducing the
2 number of deaths and injuries at rail-highway
3 crossings;

4 “(C) to increase the efficiency, and reli-
5 ability of the movement of people and freight
6 over rail-highway crossings;

7 “(D) to increase the capacity of the freight
8 and passenger rail system;

9 “(E) to reduce the amount of noise from
10 trains; and

11 “(F) to improve air quality and reduce
12 greenhouse gas emissions from less idling at
13 rail-highway crossings.

14 “(c) FUNDING.—

15 “(1) GRANT AMOUNTS.—Except as otherwise
16 provided, a grant under the Program shall be—

17 “(A) in the case of a large project, in an
18 amount that is—

19 “(i) adequate to fully fund the project
20 (in combination with other financial re-
21 sources identified in the application); and

22 “(ii) not less than \$50,000,000; and

23 “(B) in the case of an eligible project that
24 is not a large project, in an amount that is—

1 “(i) adequate to fully fund the project
2 (in combination with other financial re-
3 sources identified in the application); and

4 “(ii) not less than \$2,500,000.

5 “(2) MAXIMUM AMOUNT.—For an eligible
6 project receiving assistance under the Program, the
7 amount of assistance provided by the Secretary
8 under this section, as a share of eligible project
9 costs, shall be—

10 “(A) in the case of a large project, not
11 more than 50 percent; and

12 “(B) in the case of a project this not a
13 large project, not more than 80 percent.

14 “(3) RAILROAD SHARE.—A railroad’s share of
15 the cost of a project funded under this section—

16 “(A) shall be 10 percent of the net benefit
17 to the railroad for the purpose of determining
18 the railroad’s share of the cost of the project;
19 and

20 “(B) may not be more than 5 percent of
21 the cost share described under subparagraph
22 (A) may be attributable to non-cash contribu-
23 tions of materials and labor furnished by the
24 railroad in connection with the construction of
25 such project.

1 “(4) LARGE PROJECTS.—At least 70 percent of
2 the funds awarded in a fiscal year under this Pro-
3 gram shall go to large projects.

4 “(5) FUTURE PIPELINE.—At least 5 percent of
5 the total amount awarded in a fiscal year under this
6 Program shall be for projects seeking funding for
7 planning, preliminary engineering, or final environ-
8 mental review. The Secretary shall ensure that the
9 funding awarded is sufficient for such project to be
10 eligible for grant amounts for final design or con-
11 struction in a future application cycle.

12 “(d) ELIGIBLE ENTITY.—The Secretary may make
13 a grant under the Program to any of the following:

14 “(1) A State.

15 “(2) A group of States.

16 “(3) An interstate compact.

17 “(4) A public agency or publicly chartered au-
18 thority established by 1 or more States.

19 “(5) A political subdivision of a State.

20 “(6) A metropolitan planning organization.

21 “(7) Amtrak or another rail carrier that pro-
22 vides intercity rail passenger transportation (as de-
23 fined in section 24102 of title 49).

24 “(8) A commuter rail authority.

1 “(9) A Tribal government or a consortium of
2 Tribal governments.

3 “(10) A multistate or multijurisdictional group
4 of entities described in paragraphs (1) through (9).

5 “(e) CONSIDERATIONS.—

6 “(1) PRIMARY CONSIDERATIONS.—In awarding
7 grants under the Program, the Secretary shall con-
8 sider the following primary factors:

9 “(A) Accident history at the crossing over
10 the last 10 years, including the number of fa-
11 talities and injuries.

12 “(B) Volume of trains, both freight and
13 passenger, passing through the crossing.

14 “(C) Average speed of trains, both freight
15 and passenger, that pass through the crossing.

16 “(D) Annual average daily traffic at the
17 crossing.

18 “(E) Likelihood of a collision based on the
19 geometry of the crossing.

20 “(F) Design speed and speed limit of the
21 roadway that meets the crossing.

22 “(G) The number of other at-grade cross-
23 ings in the vicinity of the project location.

24 “(H) The number of other grade separated
25 crossings in the vicinity of the project location.

1 “(I) The amount of critical facilities near
2 the crossing, including emergency response
3 services, hospitals, schools, chemical and power
4 plants (including nuclear), military bases and
5 installations, and other similar facilities as de-
6 termined by the Secretary.

7 “(2) SECONDARY CONSIDERATIONS.—In award-
8 ing grants under the Program, the Secretary shall
9 consider the following secondary factors:

10 “(A) Improvement in air quality, including
11 reductions in greenhouse gas emissions.

12 “(B) Decrease in train noise.

13 “(C) Increase in economic development.

14 “(D) Improvements to commuter and
15 intercity passenger rail service and on-time per-
16 formance.

17 “(E) Improvements to the rail freight net-
18 work.

19 “(F) Socioeconomic status of the commu-
20 nity where the project is located.

21 “(G) The applicant’s history of dem-
22 onstrating financial commitment to and funding
23 similar projects.

1 “(3) PROHIBITED CONSIDERATIONS.—In
2 awarding grants under this section, the Secretary
3 may not—

4 “(A) limit the amount of grants or assist-
5 ance any 1 State can receive;

6 “(B) require a minimum amount of grants
7 or assistance to go to rural areas; or

8 “(C) take into consideration the amount of
9 new non-Federal revenue a grant applicant has
10 raised.

11 “(f) COMPETITIVE PROCESS AND EVALUATION OF
12 ELIGIBLE PROJECTS OTHER THAN LARGE PROJECTS.—

13 “(1) COMPETITIVE PROCESS.—

14 “(A) IN GENERAL.—The Secretary shall—

15 “(i) for the first fiscal year for which
16 funds are made available for obligation
17 under the Program, not later than 60 days
18 after the date on which the template under
19 subparagraph (B)(i) is developed, and in
20 subsequent fiscal years, not later than 60
21 days after the date on which amounts are
22 made available for obligation under the
23 Program, solicit grant applications for eli-
24 gible projects other than large projects;
25 and

1 “(ii) not later than 120 days after the
2 date on which the solicitation under clause
3 (i) expires, conduct evaluations under
4 paragraph (3).

5 “(B) REQUIREMENTS.—In carrying out
6 subparagraph (A), the Secretary shall—

7 “(i) develop a template for applicants
8 to use to summarize project needs and
9 benefits, including benefits described in
10 paragraph (3)(B)(i); and

11 “(ii) enable applicants to use data
12 from the national crossing inventory under
13 section 20160 of title 49 to populate tem-
14 plates described in clause (i), as applicable.

15 “(2) APPLICATIONS.—An eligible entity shall
16 submit to the Secretary an application at such time,
17 in such manner, and containing such information as
18 the Secretary may require.

19 “(3) EVALUATION.—

20 “(A) IN GENERAL.—Prior to providing a
21 grant under this subsection, the Secretary
22 shall—

23 “(i) conduct an evaluation of each
24 project for which an application is received
25 under this subsection; and

1 “(ii) assign a quality rating to the
2 project on the basis of the evaluation
3 under clause (i).

4 “(B) REQUIREMENTS.—In carrying out an
5 evaluation under subparagraph (A), the Sec-
6 retary shall—

7 “(i) consider information on project
8 benefits submitted by the applicant using
9 the template developed under paragraph
10 (1)(B)(i), including how and to what ex-
11 tent the project will address the factors
12 listed in subsection (e)(1); and

13 “(ii) consider whether and the extent
14 to which the benefits, including the bene-
15 fits described in clause (i), are more likely
16 than not to outweigh the total project
17 costs.

18 “(g) COMPETITIVE PROCESS, EVALUATION, AND AN-
19 NUAL REPORT FOR LARGE PROJECTS.—

20 “(1) IN GENERAL.—The Secretary shall estab-
21 lish an annual date by which an eligible entity sub-
22 mitting an application for a large project shall sub-
23 mit to the Secretary such information as the Sec-
24 retary may require, including information described
25 in paragraph (2), in order for a large project to be

1 considered for a recommendation by the Secretary
2 for funding in the next annual report under para-
3 graph (6).

4 “(2) INFORMATION REQUIRED.—The informa-
5 tion referred to in paragraph (1) includes—

6 “(A) all necessary information required for
7 the Secretary to evaluate the large project; and

8 “(B) information sufficient for the Sec-
9 retary to determine that—

10 “(i) the large project meets the appli-
11 cable requirements under this section; and

12 “(ii) there is a reasonable likelihood
13 that the large project will continue to meet
14 the requirements under this section.

15 “(3) DETERMINATION; NOTICE.—On making a
16 determination that information submitted to the
17 Secretary under paragraph (1) is sufficient, the Sec-
18 retary shall provide a written notice of that deter-
19 mination to—

20 “(A) the entity that submitted the applica-
21 tion;

22 “(B) the Committee on Environment and
23 Public Works of the Senate; and

24 “(C) the Committee on Transportation and
25 Infrastructure of the House of Representatives.

1 “(4) EVALUATION.—The Secretary may rec-
2 ommend a large project for funding in the annual
3 report under paragraph (6) only if the Secretary
4 evaluates the proposed project and determines that
5 the project is justified because the project—

6 “(A) addresses a need to eliminate the
7 grade crossing as determined by the Secretary,
8 consistent with the goals of the Program under
9 subsection (b)(2);

10 “(B) will generate significant benefits
11 based upon the factors listed in subsection
12 (e)(1), as determined by the Secretary;

13 “(C) is cost effective based on an analysis
14 of whether the benefits described in subpara-
15 graph (B) are expected to outweigh the project
16 costs; and

17 “(D) is supported by other Federal or non-
18 Federal financial commitments or revenues ade-
19 quate to fund construction of the project.

20 “(5) RATINGS.—

21 “(A) IN GENERAL.—The Secretary shall
22 create a data driven ranking to evaluate, rate,
23 and rank large projects. The Secretary shall de-
24 velop a methodology that—

1 “(i) quantifies each factor listed in
2 subsection (e)(1)(A) on a numeric point
3 scale, with zero being the lowest number
4 and the maximum number determined
5 based on the Secretary’s methodology;

6 “(ii) calculates a numerical ‘safety
7 score’ based on how the project would ad-
8 dress each of the factors listed in sub-
9 section (e)(1)(A) with zero being the lowest
10 number and the maximum number deter-
11 mined based on the Secretary’s method-
12 ology;

13 “(iii) evaluates on a 5-point scale (the
14 points of which include ‘high’, ‘medium-
15 high’, ‘medium’, ‘medium-low’, and ‘low’)
16 the benefits of the project for each of the
17 factors listed in subsection (e)(1)(B); and

18 “(iv) evaluates on a 5-point scale (the
19 points of which include ‘high’, ‘medium-
20 high’, ‘medium’, ‘medium-low’, and ‘low’)
21 how each projects meets subparagraphs
22 (C) and (D) of paragraph (4).

23 “(B) OVERALL WEIGHTING.—The Sec-
24 retary shall develop and publish a methodology
25 that explains how the Secretary will weight each

1 rating in subparagraph (A) when awarding
2 grants under this section. The Secretary shall
3 give at least 50 percent weight to the ‘safety
4 score’ calculated under subparagraph (A)(ii).

5 “(C) PRIORITIZATION.—The Secretary
6 shall prioritize funding for those projects scor-
7 ing highest under subparagraph (B). To be con-
8 sidered justified and receive a recommendation
9 for funding in the annual report under para-
10 graph (6), a project shall receive a ‘satisfactory’
11 rating for each rating required under subpara-
12 graph (A). The Secretary shall determine and
13 publish what is considered a ‘satisfactory’ rat-
14 ing for the purposes of this subparagraph.

15 “(D) POSTING OF RATINGS.—Not later
16 than 30 days after announcing an intent to
17 award funds under this section, the Secretary
18 shall post on the Department of Transpor-
19 tation’s website the overall ranking and scores,
20 including the score for each metric quantified
21 under paragraph (5)(A), for each eligible large
22 application that submitted an application.

23 “(6) ANNUAL REPORT ON FUNDING REC-
24 OMMENDATIONS FOR LARGE PROJECTS.—

1 “(A) IN GENERAL.—Not later than the
2 first Monday in February of each year, the Sec-
3 retary shall submit to the Committees on
4 Transportation and Infrastructure and Appro-
5 priations of the House of Representatives and
6 the Committees on Environment and Public
7 Works and Appropriations of the Senate a re-
8 port that includes—

9 “(i) a list of large projects that have
10 requested a recommendation for funding
11 under a new grant agreement from funds
12 anticipated to be available to carry out this
13 subsection in the next fiscal year;

14 “(ii) the evaluation under paragraph
15 (4) and ratings under paragraph (5) for
16 each project referred to in subsection (i);
17 and

18 “(iii) the grant amounts that the Sec-
19 retary recommends providing to large
20 projects in the next fiscal year, including—

21 “(I) scheduled payments under
22 previously signed multiyear grant
23 agreements under subsection (i);

24 “(II) payments for new grant
25 agreements, including single-year

1 grant agreements and multiyear grant
2 agreements;

3 “(III) a description of how
4 amounts anticipated to be available
5 for the Program or the President’s
6 budget request for that fiscal year will
7 be distributed; and

8 “(IV) for each project for which
9 the Secretary recommends a new
10 multiyear grant agreement under sub-
11 section (i), the proposed payout sched-
12 ule for the project.

13 “(B) LIMITATIONS.—The Secretary shall
14 not recommend in an annual report under this
15 paragraph a new multiyear grant agreement
16 unless the Secretary determines that the project
17 can be completed using funds that are antici-
18 pated to be available in future fiscal years.

19 “(C) CONSIDERATIONS.—In selecting
20 projects to recommend for funding in the an-
21 nual report under this paragraph, the Secretary
22 shall—

23 “(i) consider the amount of funds
24 available in future fiscal years for

1 multiyear grant agreements as described in
2 subparagraph (B); and

3 “(ii) assume the availability of funds
4 in future fiscal years for multiyear grant
5 agreements that extend beyond the period
6 of authorization based on the amount
7 made available for large projects under the
8 Program in the last fiscal year of the pe-
9 riod of authorization.

10 “(h) ELIGIBLE PROJECT COSTS.—

11 “(1) IN GENERAL.—A grant received for a
12 project under the Program may be used for—

13 “(A) development phase activities, includ-
14 ing planning, feasibility analysis, revenue fore-
15 casting, environmental review, preliminary engi-
16 neering and design work, and other
17 preconstruction activities; and

18 “(B) construction, reconstruction, rehabili-
19 tation, acquisition of real property (including
20 land related to the project and improvements to
21 the land), environmental mitigation, construc-
22 tion contingencies, acquisition of equipment,
23 and operational improvements directly related
24 to improving system performance.

1 “(2) LIMITATION.—The Secretary shall not
2 limit eligible projects from consideration for funding
3 for planning, engineering, environmental, construc-
4 tion, and design elements of the same project in the
5 same application.

6 “(i) MULTIYEAR GRANT AGREEMENTS FOR LARGE
7 PROJECTS.—

8 “(1) IN GENERAL.—A large project that re-
9 ceives a grant under the Program in an amount of
10 not less than \$100,000,000 may be carried out
11 through a multiyear grant agreement in accordance
12 with this subsection.

13 “(2) REQUIREMENTS.—A multiyear grant
14 agreement for a large project described in paragraph
15 (1) shall—

16 “(A) establish the terms of participation by
17 the Federal Government in the project;

18 “(B) establish the maximum amount of
19 Federal financial assistance for the project in
20 accordance with paragraphs (1) and (2) of sub-
21 section (c);

22 “(C) establish a payout schedule for the
23 project that provides for disbursement of the
24 full grant amount by not later than 4 fiscal

1 years after the fiscal year in which the initial
2 amount is provided;

3 “(D) determine the period of time for com-
4 pleting the project, even if that period extends
5 beyond the period of an authorization; and

6 “(E) attempt to improve timely and effi-
7 cient management of the project, consistent
8 with all applicable Federal laws (including regu-
9 lations).

10 “(3) SPECIAL FINANCIAL RULES.—

11 “(A) IN GENERAL.—A multiyear grant
12 agreement under this subsection—

13 “(i) shall obligate an amount of avail-
14 able budget authority specified in law; and

15 “(ii) may include a commitment, con-
16 tingent on amounts to be specified in law
17 in advance for commitments under this
18 paragraph, to obligate an additional
19 amount from future available budget au-
20 thority specified in law.

21 “(B) STATEMENT OF CONTINGENT COM-
22 MITMENT.—The agreement shall state that the
23 contingent commitment is not an obligation of
24 the Federal Government.

1 “(C) INTEREST AND OTHER FINANCING
2 COSTS.—

3 “(i) IN GENERAL.—Interest and other
4 financing costs of carrying out a part of
5 the project within a reasonable time shall
6 be considered a cost of carrying out the
7 project under a multiyear grant agreement,
8 except that eligible costs may not be more
9 than the cost of the most favorable financ-
10 ing terms reasonably available for the
11 project at the time of borrowing.

12 “(ii) CERTIFICATION.—The applicant
13 shall certify to the Secretary that the ap-
14 plicant has shown reasonable diligence in
15 seeking the most favorable financing
16 terms.

17 “(4) ADVANCE PAYMENT.—Notwithstanding
18 any other provision of law, an entity carrying out a
19 large project under a multiyear grant agreement—

20 “(A) may use funds made available to the
21 entity under this title for eligible project costs
22 of the large project until the amount specified
23 in the multiyear grant agreement for the
24 project for that fiscal year becomes available for
25 obligation; and

1 “(B) if the entity uses funds as described
2 in subparagraph (A), the funds used shall be
3 reimbursed from the amount made available
4 under the multiyear grant agreement for the
5 project.

6 “(j) UNDERTAKING PARTS OF PROJECTS IN AD-
7 VANCE UNDER LETTERS OF NO PREJUDICE.—

8 “(1) IN GENERAL.—The Secretary may pay to
9 an applicant all eligible project costs under the Pro-
10 gram, including costs for an activity for an eligible
11 project incurred prior to the date on which the
12 project receives funding under the Program if—

13 “(A) before the applicant carries out the
14 activity, the Secretary approves through a letter
15 to the applicant the activity in the same man-
16 ner as the Secretary approves other activities as
17 eligible under the Program;

18 “(B) a record of decision, a finding of no
19 significant impact, or a categorical exclusion
20 under the National Environmental Policy Act of
21 1969 (42 U.S.C. 4321 et seq.) has been issued
22 for the eligible project; and

23 “(C) the activity is carried out without
24 Federal assistance and in accordance with all
25 applicable procedures and requirements.

1 “(2) INTEREST AND OTHER FINANCING
2 COSTS.—

3 “(A) IN GENERAL.—For purposes of para-
4 graph (1), the cost of carrying out an activity
5 for an eligible project includes the amount of
6 interest and other financing costs, including
7 any interest earned and payable on bonds, to
8 the extent interest and other financing costs are
9 expended in carrying out the activity for the eli-
10 gible project, except that interest and other fi-
11 nancing costs may not be more than the cost of
12 the most favorable financing terms reasonably
13 available for the eligible project at the time of
14 borrowing.

15 “(B) CERTIFICATION.—The applicant shall
16 certify to the Secretary that the applicant has
17 shown reasonable diligence in seeking the most
18 favorable financing terms under subparagraph
19 (A).

20 “(3) NO OBLIGATION OR INFLUENCE ON REC-
21 OMMENDATIONS.—An approval by the Secretary
22 under paragraph (1)(A) shall not—

23 “(A) constitute an obligation of the Fed-
24 eral Government; or

1 “(B) alter or influence any evaluation
2 under subsections (f)(3)(A)(i) or (g)(4) or any
3 recommendation by the Secretary for funding
4 under the Program.

5 “(k) CONGRESSIONAL NOTIFICATION.—Not later
6 than 30 days before making a grant under the Program,
7 the Secretary shall submit to the Committee on Transpor-
8 tation and Infrastructure of the House of Representatives
9 and the Committee on Environment and Public Works of
10 the Senate a written notification of the proposed grant
11 that includes—

12 “(1) an evaluation and justification for the eli-
13 gible project; and

14 “(2) the amount of the proposed grant.

15 “(l) REPORTS.—

16 “(1) ANNUAL REPORT.—Not later than August
17 1 of each fiscal year, the Secretary shall make avail-
18 able on the website of the Department of Transpor-
19 tation an annual report that lists each eligible
20 project for which a grant has been provided under
21 the Program during the fiscal year.

22 “(2) GAO ASSESSMENT AND REPORT.—Not
23 later than 3 years after the date of enactment of
24 this section, the Comptroller General of the United
25 States shall—

1 “(A) conduct an assessment of the admin-
 2 istrative establishment, solicitation, selection,
 3 and justification process with respect to the
 4 funding of grants under the Program; and

5 “(B) submit to the Committee on Trans-
 6 portation and Infrastructure of the House of
 7 Representatives and the Committee on Environ-
 8 ment and Public Works of the Senate a report
 9 that describes—

10 “(i) the adequacy and fairness of the
 11 process under which each eligible project
 12 that received a grant under the Program
 13 was selected; and

14 “(ii) the justification and criteria used
 15 for the selection of each eligible project.”.

16 (b) CLERICAL AMENDMENT.—The table of contents
 17 for chapter 1 of title 23, United States Code, is amended
 18 by inserting after the item relating to section 130 the fol-
 19 lowing:

“131. Railway-highway crossing separation program.”.

