

115TH CONGRESS
2D SESSION

S. 2634

To free States to spend gas taxes on their transportation priorities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 9, 2018

Mr. PORTMAN (for himself and Mr. ISAKSON) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To free States to spend gas taxes on their transportation priorities, 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 “State Transportation
5 Flexibility Act”.

6 **SEC. 2. DIRECT FEDERAL-AID HIGHWAY PROGRAM.**

7 (a) IN GENERAL.—Chapter 1 of title 23, United
8 States Code, is amended by adding at the end the fol-
9 lowing:

1 **“§ 171. Direct Federal-aid highway program**

2 “(a) ELECTION BY STATE NOT TO PARTICIPATE.—
 3 Notwithstanding any other provision of law and in accord-
 4 ance with this section, a State may elect not to participate
 5 in any Federal program relating to highways, including
 6 a Federal highway program under the Safe, Accountable,
 7 Flexible, Efficient Transportation Equity Act: A Legacy
 8 for Users (Public Law 109–59; 119 Stat. 1144), the Mov-
 9 ing Ahead for Progress in the 21st Century Act (Public
 10 Law 112–141; 126 Stat. 405), the Fixing America’s Sur-
 11 face Transportation Act (Public Law 114–94; 129 Stat.
 12 1312), this title, or title 49.

13 “(b) DIRECT FEDERAL-AID HIGHWAY PROGRAM.—

14 “(1) IN GENERAL.—The Secretary shall carry
 15 out a direct Federal-aid highway program (referred
 16 to in this section as the ‘program’) in accordance
 17 with the requirements of this section under which
 18 the legislature of a State may elect, not fewer than
 19 90 days before the beginning of a fiscal year—

20 “(A) to waive the right of the State to re-
 21 ceive amounts apportioned or allocated to the
 22 State under this chapter for the fiscal year to
 23 which the election relates; and

24 “(B) to receive an amount for that fiscal
 25 year that is determined in accordance with sub-
 26 section (e) for that fiscal year.

1 “(2) EFFECT.—On making an election under
2 paragraph (1), a State—

3 “(A) assumes all Federal obligations relat-
4 ing to each program that is the subject of the
5 election; and

6 “(B) shall fulfill those obligations using
7 the amounts transferred to the State under
8 subsection (e).

9 “(3) ELIGIBLE YEARS.—A State may make an
10 election with respect to fiscal year 2019 and any fis-
11 cal year thereafter.

12 “(c) STATE RESPONSIBILITY.—

13 “(1) IN GENERAL.—The Governor of a State
14 making an election under subsection (b) shall—

15 “(A) agree to maintain the Interstate Sys-
16 tem in accordance with the current Interstate
17 System program;

18 “(B) submit a plan to the Secretary de-
19 scribing—

20 “(i) the purposes, projects, and uses
21 to which amounts received under the pro-
22 gram will be put; and

23 “(ii) which programmatic require-
24 ments of this title the State elects to con-
25 tinue;

1 “(C) agree to obligate or expend amounts
2 received under the program exclusively for
3 projects that would be eligible for funding
4 under section 133(b) if the State was not par-
5 ticipating in the program; and

6 “(D) agree—

7 “(i) to report annually to the Sec-
8 retary on the use of amounts received
9 under the program; and

10 “(ii) to make the report available to
11 the public in an easily accessible format.

12 “(2) NO FEDERAL LIMITATION ON USE OF
13 FUNDS.—Except as provided in paragraph (1), the
14 expenditure or obligation of funds received by a
15 State under the program shall not be subject to any
16 Federal requirement under this title (except for this
17 section), title 49, or any other Federal law (includ-
18 ing regulations).

19 “(3) ELECTION IRREVOCABLE.—An election
20 under subsection (b) shall be irrevocable during the
21 applicable fiscal year.

22 “(d) EFFECT ON PREEXISTING COMMITMENTS.—An
23 election under subsection (b) shall not affect any responsi-
24 bility or commitment of the State under this title for any
25 fiscal year with respect to—

1 “(1) a project or program funded under this
2 title (other than under this section); or

3 “(2) any project or program funded under this
4 title in any fiscal year for which an election under
5 subsection (b) is not in effect.

6 “(e) TRANSFERS.—

7 “(1) IN GENERAL.—The amount to be trans-
8 ferred to a State under the program for a fiscal year
9 shall be the portion of the taxes appropriated to the
10 Highway Trust Fund (other than for the Mass
11 Transit Account) for that fiscal year that is attrib-
12 utable to highway users in that State during that
13 fiscal year, reduced by a pro rata share withheld by
14 the Secretary to fund contract authority for pro-
15 grams of the National Highway Traffic Safety Ad-
16 ministration and the Federal Motor Carrier Safety
17 Administration.

18 “(2) TRANSFERS UNDER PROGRAM.—

19 “(A) IN GENERAL.—Transfers under the
20 program—

21 “(i) shall be made at the same time as
22 deposits to the Highway Trust Fund are
23 made by the Secretary of the Treasury;
24 and

25 “(ii) shall—

1 “(I) be made on the basis of esti-
2 mates by the Secretary, in consulta-
3 tion with the Secretary of the Treas-
4 ury, based on the most recent data
5 available; and

6 “(II) include proper adjustments
7 in amounts subsequently transferred
8 to the extent prior estimates were in
9 excess of, or less than, the amounts
10 required to be transferred.

11 “(B) LIMITATION.—

12 “(i) IN GENERAL.—An adjustment
13 under subparagraph (A)(ii)(II) to any
14 transfer may not exceed 5 percent of the
15 transferred amount to which the adjust-
16 ment relates.

17 “(ii) ADJUSTMENT GREATER THAN 5
18 PERCENT.—If the adjustment required
19 under subparagraph (A)(ii)(II) exceeds the
20 percentage described in clause (i), the ex-
21 cess shall be taken into account in making
22 subsequent adjustments under subpara-
23 graph (A)(ii)(II).

24 “(f) APPLICATION WITH OTHER AUTHORITY.—Any
25 contract authority under this chapter (and any obligation

1 limitation) authorized for a State for a fiscal year for
2 which an election by that State is in effect under sub-
3 section (b)—

4 “(1) shall be rescinded or canceled; and

5 “(2) shall not be reallocated or distributed to
6 any other State under this chapter.

7 “(g) MAINTENANCE OF EFFORT.—

8 “(1) IN GENERAL.—Not later than 30 days
9 after the date on which an amount is distributed to
10 a State or State agency under the program, the Gov-
11 ernor of the State shall certify to the Secretary that
12 the State will maintain the effort of the State with
13 regard to State funding for the types of projects
14 that are funded by the amounts distributed.

15 “(2) AMOUNTS.—As part of the certification
16 under paragraph (1), the Governor shall submit to
17 the Secretary a statement that identifies the amount
18 of funds the State plans to expend from State
19 sources during the covered period for the types of
20 projects that are funded by the amounts.

21 “(h) TREATMENT OF GENERAL REVENUES.—For
22 purposes of this section, any general revenue funds appro-
23 priated to the Highway Trust Fund shall be transferred
24 to a State under the program in the manner described
25 in subsection (e)(1).”.

1 (b) CONFORMING AMENDMENT.—The analysis for
 2 chapter 1 of title 23, United States Code, is amended by
 3 inserting after the item relating to section 170 the fol-
 4 lowing:

“171. Direct Federal-aid highway program.”.

5 **SEC. 3. ALTERNATIVE FUNDING OF PUBLIC TRANSPOR-**
 6 **TATION PROGRAMS.**

7 (a) IN GENERAL.—Chapter 53 of title 49, United
 8 States Code, is amended by adding at the end the fol-
 9 lowing:

10 **“§ 5341. Alternative funding of public transportation**
 11 **programs**

12 “(a) DEFINITIONS.—In this section—

13 “(1) the term ‘alternative funding program’
 14 means the program established under subsection (c);

15 “(2) the term ‘covered program’ means a Fed-
 16 eral public transportation program that is funded
 17 using amounts made available from the Mass Tran-
 18 sit Account of the Highway Trust Fund; and

19 “(3) the term ‘Federal public transportation
 20 program’ means a Federal program that provides
 21 funding for public transportation, including under—

22 “(A) the Safe, Accountable, Flexible, Effi-
 23 cient Transportation Equity Act: A Legacy for
 24 Users (Public Law 109–59; 119 Stat. 1144);

1 “(B) the Moving Ahead for Progress in the
2 21st Century Act (Public Law 112–141; 126
3 Stat. 405);

4 “(C) the Fixing America’s Surface Trans-
5 portation Act (Public Law 114–94; 129 Stat.
6 1312);

7 “(D) title 23; or

8 “(E) this chapter.

9 “(b) ELECTION BY STATE NOT TO PARTICIPATE.—
10 Notwithstanding any other provision of law and in accord-
11 ance with this section, a State may elect not to participate
12 in any covered program.

13 “(c) DIRECT PUBLIC TRANSPORTATION FUNDING
14 PROGRAM.—

15 “(1) IN GENERAL.—The Secretary shall carry
16 out a direct public transportation funding program
17 in accordance with the requirements of this section
18 under which the legislature of a State may elect, not
19 fewer than 90 days before the beginning of a fiscal
20 year—

21 “(A) to waive the right of the State to re-
22 ceive amounts apportioned or allocated to the
23 State under the covered programs for the fiscal
24 year to which the election relates; and

1 “(B) to receive an amount for that fiscal
2 year that is determined in accordance with sub-
3 section (f).

4 “(2) EFFECT.—On making an election under
5 paragraph (1), a State—

6 “(A) assumes all Federal obligations relat-
7 ing to each program that is the subject of the
8 election; and

9 “(B) shall fulfill those obligations using
10 the amounts transferred to the State under
11 subsection (f).

12 “(3) ELIGIBLE YEARS.—A State may make an
13 election with respect to fiscal year 2019 and any fis-
14 cal year thereafter.

15 “(d) STATE RESPONSIBILITY.—

16 “(1) IN GENERAL.—The Governor of a State
17 that participates in the alternative funding program
18 shall—

19 “(A) submit a plan to the Secretary that
20 describes—

21 “(i) the purposes, projects, and uses
22 to which amounts received under the alter-
23 native funding program will be put; and

1 “(ii) which programmatic require-
2 ments of the covered programs the State
3 elects to continue;

4 “(B) agree to obligate or expend amounts
5 received under the alternative funding program
6 exclusively for projects that would be eligible for
7 funding under the covered programs if the
8 State was not participating in the alternative
9 funding program;

10 “(C) submit to the Secretary an annual re-
11 port on the use of amounts received under the
12 alternative funding program; and

13 “(D) make the annual report available to
14 the public in an easily accessible format.

15 “(2) NO FEDERAL LIMITATION ON USE OF
16 FUNDS.—Except as provided in paragraph (1), the
17 expenditure or obligation of funds received by a
18 State under the alternative funding program shall
19 not be subject to the requirements of—

20 “(A) this chapter (except for this section);

21 “(B) any covered program not under this
22 chapter;

23 “(C) title 23; or

24 “(D) any other Federal law (including reg-
25 ulations).

1 “(3) ELECTION IRREVOCABLE.—An election
2 under subsection (c) shall be irrevocable during the
3 applicable fiscal year.

4 “(e) EFFECT ON PREEXISTING COMMITMENTS.—An
5 election by a State under subsection (c) shall not affect
6 any responsibility or commitment of the State with respect
7 to a project or program funded under a covered program
8 in a fiscal year for which an election under subsection (c)
9 is not in effect.

10 “(f) TRANSFERS.—

11 “(1) IN GENERAL.—The amount to be trans-
12 ferred to a State under the alternative funding pro-
13 gram for a fiscal year shall be the portion of the
14 taxes transferred to the Mass Transit Account of the
15 Highway Trust Fund under section 9503(e) of the
16 Internal Revenue Code of 1986 for that fiscal year
17 that is attributable to highway users in that State
18 during that fiscal year.

19 “(2) TRANSFERS UNDER PROGRAM.—

20 “(A) IN GENERAL.—Transfers under the
21 alternative funding program—

22 “(i) shall be made at the same time as
23 transfers to the Mass Transit Account of
24 the Highway Trust Fund are made by the
25 Secretary of the Treasury; and

1 “(ii) shall—

2 “(I) be made on the basis of esti-
3 mates by the Secretary, in consulta-
4 tion with the Secretary of the Treas-
5 ury, based on the most recent data
6 available; and

7 “(II) include proper adjustments
8 in amounts subsequently transferred
9 under the alternative funding pro-
10 gram, to the extent prior estimates
11 were in excess of, or less than, the
12 amounts required to be transferred
13 under the alternative funding pro-
14 gram.

15 “(B) LIMITATION.—

16 “(i) IN GENERAL.—An adjustment
17 under subparagraph (A)(ii)(II) to any
18 transfer may not exceed 5 percent of the
19 transferred amount to which the adjust-
20 ment relates.

21 “(ii) ADJUSTMENT GREATER THAN 5
22 PERCENT.—If the adjustment required
23 under subparagraph (A)(ii)(II) exceeds the
24 percentage described in clause (i) of this
25 subparagraph, the excess shall be taken

1 into account in making subsequent adjust-
2 ments under subparagraph (A)(ii)(II).

3 “(g) APPLICATION WITH OTHER AUTHORITY.—Any
4 contract authority under a covered program (and any obli-
5 gation limitation) authorized for a State for a fiscal year
6 for which the State elects to participate in the alternative
7 funding program shall be rescinded or canceled.

8 “(h) MAINTENANCE OF EFFORT.—

9 “(1) IN GENERAL.—Not later than 30 days
10 after the date on which amounts are distributed to
11 a State or State agency under the alternative fund-
12 ing program, the Governor of the State shall certify
13 to the Secretary that the State will maintain the ef-
14 fort of the State with regard to State funding for
15 the types of projects that are funded by the amounts
16 distributed.

17 “(2) AMOUNTS.—As part of the certification
18 under paragraph (1), the Governor shall submit to
19 the Secretary a statement that identifies the amount
20 of funds the State plans to expend from State
21 sources for projects funded under the alternative
22 funding program during the fiscal year for which the
23 State elects to participate in the alternative funding
24 program.

1 “(i) TREATMENT OF GENERAL REVENUES.—For
2 purposes of this section, any general revenue funds appro-
3 priated to the Mass Transit Account of the Highway Trust
4 Fund shall be transferred to a State under the alternative
5 funding program in the manner described in subsection
6 (f)(1).”.

7 (b) CONFORMING AMENDMENT.—The analysis for
8 chapter 53 of title 49, United States Code, is amended
9 by inserting after the item relating to section 5340 the
10 following:

“5341. Alternative funding of public transportation programs.”.

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