

111TH CONGRESS  
1ST SESSION

# S. 903

To permit a State to elect to receive the State's contributions to the Highway Trust Fund in lieu of its Federal-aid Highway program apportionment for the next fiscal year, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 28, 2009

Mrs. HUTCHISON (for herself, Mr. MARTINEZ, Mr. CORNYN, and Mr. KYL) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

To permit a State to elect to receive the State's contributions to the Highway Trust Fund in lieu of its Federal-aid Highway program apportionment for the next fiscal year, 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 "Highway Fairness and  
5       Reform Act of 2009".

1 **SEC. 2. ELECTION TO RECEIVE STATE CONTRIBUTION TO**  
2 **HIGHWAY TRUST FUND IN LIEU OF PARTICI-**  
3 **PATING IN FEDERAL-AID HIGHWAY PRO-**  
4 **GRAM.**

5 (a) IN GENERAL.—Chapter 1 of title 23, United  
6 States Code, is amended by inserting after section 149 the  
7 following:

8 **“§ 150. Direct Federal-aid highway program**

9 “(a) IN GENERAL.—Beginning with fiscal year 2011,  
10 the Secretary shall carry out a direct Federal-aid highway  
11 program in accordance with the requirements of this sec-  
12 tion. Under the program, the Governor or chief executive  
13 officer of a State may elect, not less than 90 days before  
14 the beginning of the fiscal year, to have the State waive  
15 its right to receive amounts apportioned or allocated to  
16 it under the Federal-aid highway program for the fiscal  
17 year to which the election relates; and to receive instead  
18 the amount determined under subsection (d) for that fiscal  
19 year. The election shall be made in such form and manner  
20 as the Secretary may require and shall be irrevocable.

21 “(b) STATE RESPONSIBILITY.—

22 “(1) IN GENERAL.—The Secretary shall accept  
23 an election under subsection (a) if the Secretary de-  
24 termines that the State—

1           “(A) has an interstate maintenance pro-  
2           gram and agrees to maintain the interstate in  
3           accordance with that program;

4           “(B) submits a plan to the Secretary de-  
5           scribing—

6                   “(i) the purposes, projects, and uses  
7                   to which amounts received under the pro-  
8                   gram will be put; and

9                   “(ii) which programmatic require-  
10                  ments of this title the State elects to con-  
11                  tinue;

12           “(C) agrees to obligate or expend amounts  
13           received under the program exclusively for  
14           projects that would be eligible for funding  
15           under section 133(b) of this title if the State  
16           were not participating in the program; and

17           “(D) agrees to report annually to the Sec-  
18           retary on the use of amounts received under the  
19           program and to make the report available to  
20           the public in an easily accessible format.

21           “(2) SAFETY REQUIREMENTS.—The Secretary  
22           may determine that requirements important for  
23           transportation safety continue to apply to a State  
24           that makes an election under subsection (a).

1           “(3) SURFACE TRANSPORTATION PROGRAM.—A  
2 State that makes an election under subsection (a)  
3 shall continue to suballocate funds to urbanized  
4 areas and other areas using the formulae and rules  
5 under section 133(d)(3) of this title.

6           “(4) NO LIMITATION ON USE OF FUNDS.—Ex-  
7 cept as provided in paragraphs (1), (2), and (3), the  
8 expenditure or obligation of funds received by the  
9 State under the program are not subject to regula-  
10 tion under this title or title 49.

11          “(c) EFFECT ON PRE-EXISTING OBLIGATIONS.—The  
12 making of an election under subsection (a) shall not affect  
13 any obligation, responsibility, or commitment of the State  
14 under this title for any fiscal year with respect to—

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

17           “(2) any project or program funded under this  
18 title in any fiscal year for which an election under  
19 subsection (a) is not in effect.

20          “(d) TRANSFERS.—

21           “(1) IN GENERAL.—The amount to be trans-  
22 ferred to a State under the program for a fiscal year  
23 shall be the portion of the taxes appropriated to the  
24 Highway Trust Fund under section 9503 of the In-  
25 ternal Revenue Code of 1986, other than for the

1 Mass Transit Account, for a fiscal year for which an  
2 election is in effect under subsection (a) that is at-  
3 tributable to highway users in that State during that  
4 fiscal year, reduced by a pro rata share withheld by  
5 the Secretary to fund contract authority for pro-  
6 grams of the National Highway Traffic Safety Ad-  
7 ministration and the Federal Motor Carrier Safety  
8 Administration.

9 “(2) GENERAL FUND AMOUNTS.—For purposes  
10 of paragraph (1), any amounts deposited in or cred-  
11 ited to the Highway Trust Fund from the general  
12 fund of the Treasury shall be treated as if they were  
13 taxes appropriated to the Fund.

14 “(3) TRANSFERS.—

15 “(A) IN GENERAL.—Transfers under the  
16 program—

17 “(i) shall be made at the same time as  
18 deposits to the Highway Trust Fund are  
19 made by the Secretary of the Treasury;

20 “(ii) shall be made on the basis of es-  
21 timates by the Secretary, in consultation  
22 with the Secretary of the Treasury, and  
23 proper adjustments shall be made in  
24 amounts subsequently transferred to the  
25 extent prior estimates were in excess of, or

1           less than, the amounts required to be  
2           transferred.

3           “(B) LIMITATION.—An adjustment under  
4           subparagraph (A)(ii) to any transfer may not  
5           exceed 5 percent of the transferred amount to  
6           which the adjustment relates. If the adjustment  
7           required under subparagraph (A)(ii) exceeds  
8           that percentage, the excess shall be taken into  
9           account in making subsequent adjustments  
10          under subparagraph (A)(ii).

11          “(e) APPLICATION WITH OTHER AUTHORITY.—The  
12          Secretary shall rescind or cancel any contract authority  
13          under this chapter (and any obligation limitation) for a  
14          State for a fiscal year for which an election by that State  
15          is in effect under subsection (a).”.

16          (b) CLERICAL AMENDMENT.—The chapter analysis  
17          for chapter 1 of title 23, United States Code, is amended  
18          by inserting after the item relating to section 149 the fol-  
19          lowing:

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

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