

114TH CONGRESS  
1ST SESSION

# S. 1404

To free States to spend gas taxes on their transportation priorities.

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IN THE SENATE OF THE UNITED STATES

MAY 20, 2015

Mr. PORTMAN (for himself, Mr. MCCAIN, Mr. ISAKSON, and Mr. CORNYN) 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 free States to spend gas taxes on their transportation priorities.

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 inserting after section 610 the  
9       following:

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

2 “(a) ELECTION BY STATE NOT TO PARTICIPATE.—

3 Notwithstanding any other provision of law, a State may  
 4 elect not to participate in any Federal program relating  
 5 to highways, including a Federal highway program under  
 6 the Safe, Accountable, Flexible, Efficient Transportation  
 7 Equity Act: A Legacy for Users (Public Law 109–59; 119  
 8 Stat. 1144), the Moving Ahead for Progress in the 21st  
 9 Century Act (Public Law 112–141; 126 Stat. 405), this  
 10 title, or title 49.

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

12 “(1) IN GENERAL.—Beginning in fiscal year  
 13 2015, the Secretary shall carry out a direct Federal-  
 14 aid highway program in accordance with the require-  
 15 ments of this section under which the legislature of  
 16 a State may elect, not fewer than 90 days before the  
 17 beginning of a fiscal year—

18 “(A) to waive the right of the State to re-  
 19 ceive amounts apportioned or allocated to the  
 20 State under the Federal-aid highway program  
 21 for the fiscal year to which the election relates;  
 22 and

23 “(B) to receive an amount for that fiscal  
 24 year that is determined in accordance with sub-  
 25 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           “(c) STATE RESPONSIBILITY.—

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

12           “(A) agree to maintain the Interstate Sys-  
13 tem in accordance with the current Interstate  
14 System program;

15           “(B) submit a plan to the Secretary de-  
16 scribing—

17           “(i) the purposes, projects, and uses  
18 to which amounts received under the pro-  
19 gram will be put; and

20           “(ii) which programmatic require-  
21 ments of this title the State elects to con-  
22 tinue;

23           “(C) agree to obligate or expend amounts  
24 received under the direct Federal-aid highway  
25 program exclusively for projects that would be

1 eligible for funding under section 133(b) if the  
2 State was not participating in the program; and

3 “(D) agree to report annually to the Sec-  
4 retary on the use of amounts received under the  
5 direct Federal-aid highway program and to  
6 make the report available to the public in an  
7 easily accessible format.

8 “(2) NO FEDERAL LIMITATION ON USE OF  
9 FUNDS.—Except as provided in paragraph (1), the  
10 expenditure or obligation of funds received by a  
11 State under the direct Federal-aid highway program  
12 shall not be subject to any Federal regulation under  
13 this title (except for this section), title 49, or any  
14 other Federal law.

15 “(3) ELECTION IRREVOCABLE.—An election  
16 under subsection (b) shall be irrevocable during the  
17 applicable fiscal year.

18 “(d) EFFECT ON PREEXISTING COMMITMENTS.—  
19 The making of an election under subsection (b) shall not  
20 affect any responsibility or commitment of the State under  
21 this title for any fiscal year with respect to—

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

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

4           “(e) TRANSFERS.—

5           “(1) IN GENERAL.—The amount to be trans-  
6           ferred to a State under the direct Federal-aid high-  
7           way program for a fiscal year shall be the portion  
8           of the taxes appropriated to the Highway Trust  
9           Fund under section 9503 of the Internal Revenue  
10          Code of 1986, other than for the Mass Transit Ac-  
11          count, for that fiscal year that is attributable to  
12          highway users in that State during that fiscal year,  
13          reduced by a pro rata share withheld by the Sec-  
14          retary to fund contract authority for programs of  
15          the National Highway Traffic Safety Administration  
16          and the Federal Motor Carrier Safety Administra-  
17          tion.

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

“(ii) shall be made on the basis of estimates by the Secretary, in consultation with the Secretary of the Treasury, based on the most recent data available, and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of, or less than, the amounts required to be transferred.

“(B) LIMITATION.—

“(i) IN GENERAL.—An adjustment under subparagraph (A)(ii) to any transfer may not exceed 5 percent of the transferred amount to which the adjustment relates.

“(ii) ADJUSTMENT GREATER THAN 5 PERCENT.—If the adjustment required under subparagraph (A)(ii) exceeds the percentage described in clause (i), the excess shall be taken into account in making subsequent adjustments under subparagraph (A)(ii).

“(f) APPLICATION WITH OTHER AUTHORITY.—Any contract authority under this chapter (and any obligation limitation) authorized for a State for a fiscal year for

1 which an election by that State is in effect under sub-  
 2 section (b)—

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

4 “(2) shall not be reallocated or distributed to  
 5 any other State under the Federal-aid highway pro-  
 6 gram.

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 State Highway  
 11 Flexibility Act or an amendment made by that Act,  
 12 the Governor of the State shall certify to the Sec-  
 13 retary that the State will maintain the effort of the  
 14 State with regard to State funding for the types of  
 15 projects that are funded by the amounts.

16 “(2) AMOUNTS.—As part of the certification,  
 17 the Governor shall submit to the Secretary a state-  
 18 ment identifying the amount of funds the State  
 19 plans to expend from State sources during the cov-  
 20 ered period, for the types of projects that are funded  
 21 by the amounts.

22 “(h) TREATMENT OF GENERAL REVENUES.—For  
 23 purposes of this section, any general revenue funds appro-  
 24 priated to the Highway Trust Fund shall be transferred

1 to a State under the program in the manner described  
2 in subsection (e)(1).”.

3 (b) CONFORMING AMENDMENT.—The analysis for  
4 title 23, United States Code, is amended by inserting after  
5 the item relating to section 610 the following:

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

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

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

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

13 “(a) DEFINITIONS.—In this section—

14 “(1) ALTERNATIVE FUNDING PROGRAM.—The  
15 term ‘alternative funding program’ means the pro-  
16 gram established under subsection (c).

17 “(2) COVERED PROGRAMS.—The term ‘covered  
18 programs’ means the programs authorized under—

19 “(A) sections 5305, 5307, 5309, 5310,  
20 5311, 5335, 5339, and 5340; and

21 “(B) section 3038 of the Federal Transit  
22 Act of 1998 (49 U.S.C. 5310 note).

23 “(b) ELECTION BY STATE NOT TO PARTICIPATE.—

24 “(1) IN GENERAL.—Notwithstanding any other  
25 provision of law, a State may elect not to participate

1 in all Federal programs relating to public transpor-  
 2 tation funded under the Mass Transit Account of  
 3 the Highway Trust Fund, including the Federal  
 4 public transportation programs under the Safe, Ac-  
 5 countable, Flexible, Efficient Transportation Equity  
 6 Act: A Legacy for Users (Public Law 109–59; 119  
 7 Stat. 1144), the Moving Ahead for Progress in the  
 8 21st Century Act (Public Law 112–141; 126 Stat.  
 9 405), title 23, or this title.

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

12 “(A) assumes all Federal obligations relat-  
 13 ing to each program that is the subject of the  
 14 election; and

15 “(B) shall fulfill those obligations using  
 16 the amounts transferred to the State under  
 17 subsection (e).

18 “(c) PUBLIC TRANSPORTATION PROGRAM.—

19 “(1) PROGRAM ESTABLISHED.—Beginning in  
 20 fiscal year 2015, the Secretary shall carry out an al-  
 21 ternative funding program under which the legisla-  
 22 ture of a State may elect, not fewer than 90 days  
 23 before the beginning of a fiscal year—

24 “(A) to waive the right of the State to re-  
 25 ceive amounts apportioned or allocated to the

1 State under the covered programs for the fiscal  
2 year to which the election relates; and

3 “(B) to receive an amount for that fiscal  
4 year that is determined in accordance with sub-  
5 section (e).

6 “(2) PROGRAM REQUIREMENTS.—

7 “(A) IN GENERAL.—The Governor of a  
8 State that participates in the alternative fund-  
9 ing program shall—

10 “(i) submit a plan to the Secretary  
11 describing—

12 “(I) the purposes, projects, and  
13 uses to which amounts received under  
14 the alternative funding program will  
15 be put; and

16 “(II) which programmatic re-  
17 quirements of this title the State  
18 elects to continue;

19 “(ii) agree to obligate or expend  
20 amounts received under the alternative  
21 funding program exclusively for projects  
22 that would be eligible for funding under  
23 the covered programs if the State was not  
24 participating in the alternative funding  
25 program; and

1 “(iii) submit to the Secretary an an-  
 2 nual report on the use of amounts received  
 3 under the alternative funding program,  
 4 and to make the report available to the  
 5 public in an easily accessible format.

6 “(B) NO FEDERAL LIMITATION ON USE OF  
 7 FUNDS.—Except as provided in subparagraph  
 8 (A), the expenditure or obligation of funds re-  
 9 ceived by a State under the alternative funding  
 10 program shall not be subject to the provisions  
 11 of this title (except for this section), title 23, or  
 12 any other Federal law.

13 “(3) ELECTION IRREVOCABLE.—An election  
 14 under paragraph (1) shall be irrevocable during the  
 15 applicable fiscal year.

16 “(d) EFFECT ON PREEXISTING COMMITMENTS.—  
 17 Participation in the alternative funding program shall not  
 18 affect any responsibility or commitment of the State under  
 19 this title for any fiscal year with respect to—

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

22 “(2) any project or program funded under this  
 23 title in any fiscal year for which the State elects not  
 24 to participate in the alternative funding program.

25 “(e) TRANSFERS.—

1           “(1) IN GENERAL.—The amount to be trans-  
 2           ferred to a State under the alternative funding pro-  
 3           gram for a fiscal year shall be the portion of the  
 4           taxes transferred to the Mass Transit Account of the  
 5           Highway Trust Fund under section 9503(e) of the  
 6           Internal Revenue Code of 1986, for that fiscal year,  
 7           that is attributable to highway users in that State  
 8           during that fiscal year.

9           “(2) TRANSFERS.—

10           “(A) IN GENERAL.—Transfers under the  
 11           program—

12           “(i) shall be made at the same time as  
 13           transfers to the Mass Transit Account of  
 14           the Highway Trust Fund are made by the  
 15           Secretary of the Treasury; and

16           “(ii) shall be made on the basis of es-  
 17           timates by the Secretary, in consultation  
 18           with the Secretary of the Treasury, based  
 19           on the most recent data available, and  
 20           proper adjustments shall be made in  
 21           amounts subsequently transferred, to the  
 22           extent prior estimates were in excess of, or  
 23           less than, the amounts required to be  
 24           transferred.

25           “(B) LIMITATION.—

1           “(i) IN GENERAL.—An adjustment  
2           under subparagraph (A)(ii) to any transfer  
3           may not exceed 5 percent of the trans-  
4           ferred amount to which the adjustment re-  
5           lates.

6           “(ii) ADJUSTMENT GREATER THAN 5  
7           PERCENT.—If the adjustment required  
8           under subparagraph (A)(ii) exceeds the  
9           percentage described in clause (i), the ex-  
10          cess shall be taken into account in making  
11          subsequent adjustments under subpara-  
12          graph (A)(ii).

13          “(f) CONTRACT AUTHORITY.—There shall be re-  
14          scinded or canceled any contract authority under this  
15          chapter (and any obligation limitation) authorized for a  
16          State for a fiscal year for which the State elects to partici-  
17          pate in the alternative funding program.

18          “(g) MAINTENANCE OF EFFORT.—

19               “(1) IN GENERAL.—Not later than 30 days  
20          after the date on which an amount is distributed to  
21          a State or State agency under the State Highway  
22          Flexibility Act or an amendment made by that Act,  
23          the Governor of the State shall certify to the Sec-  
24          retary that the State will maintain the effort of the

1 State with regard to State funding for the types of  
 2 projects that are funded by the amounts.

3 “(2) AMOUNTS.—The certification under para-  
 4 graph (1) shall include a statement identifying the  
 5 amount of funds the State plans to expend from  
 6 State sources for projects funded under the alter-  
 7 native funding program, during the fiscal year for  
 8 which the State elects to participate in the alter-  
 9 native funding program.

10 “(h) TREATMENT OF GENERAL REVENUES.—For  
 11 purposes of this section, any general revenue funds appro-  
 12 priated to the Highway Trust Fund shall be transferred  
 13 to a State under the program in the manner described  
 14 in subsection (e).”.

15 (b) CONFORMING AMENDMENT.—The analysis for  
 16 title 49, United States Code, is amended by inserting after  
 17 the item relating to section 5340 the following:

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

○