

Public Law 117–44
117th Congress

An Act

Oct. 2, 2021
[H.R. 5434]

To provide an extension of Federal-aid highway, highway safety, and transit programs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Surface
Transportation
Extension Act of
2021.
23 USC 101 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Surface Transportation Extension Act of 2021”.

23 USC 101 note.

SEC. 2. DEFINITIONS.

In this Act:

(1) COVERED LAW.—The term “covered law” means any of the following:

(A) Titles I, II, III, IV, V, VI, VII, VIII, XI, and XXIV of the FAST Act (Public Law 114–94; 129 Stat. 1312).

(B) Division A, division B, subtitle A of title I and title II of division C, and division E of MAP–21 (Public Law 112–141; 126 Stat. 405).

(C) Titles I, II, and III of the SAFETEA–LU Technical Corrections Act of 2008 (Public Law 110–244; 122 Stat. 1572).

(D) Titles I, II, III, IV, V, and VI of SAFETEA–LU (Public Law 109–59; 119 Stat. 1144).

(E) Titles I, II, III, IV, and V of the Transportation Equity Act for the 21st Century (Public Law 105–178; 112 Stat. 107).

(F) Titles II, III, and IV of the National Highway System Designation Act of 1995 (Public Law 104–59; 109 Stat. 568).

(G) Titles I, II, III, IV, V, and VI of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240; 105 Stat. 1914).

(H) Title 23, United States Code.

(I) Sections 116, 117, 330, 5128, 5505, and 24905 and chapters 53, 139, 303, 311, 313, 701, and 702 of title 49, United States Code.

(J) Division B of the Continuing Appropriations Act, 2021 and Other Extensions Act (Public Law 116–159; 134 Stat. 725).

(2) EXTENSION END DATE.—The term “extension end date” means October 31, 2021.

(3) EXTENSION FRACTION.—The term “extension fraction” means the quotient, expressed as a fraction, obtained by dividing—

- (A) the number of days in the extension period; by
- (B) 365.

(4) **EXTENSION PERIOD.**—The term “extension period” means the period that begins on October 1, 2021, and ends on the extension end date.

(5) **HIGHWAY ACCOUNT.**—The term “Highway Account” means the portion of the Highway Trust Fund that is not the Mass Transit Account.

(6) **MASS TRANSIT ACCOUNT.**—The term “Mass Transit Account” means the portion of the Highway Trust Fund established under section 9503(e)(1) of the Internal Revenue Code of 1986.

(7) **SECRETARY.**—The term “Secretary” means the Secretary of Transportation.

(8) **STATE.**—The term “State” means the 50 States and the District of Columbia.

TITLE I—SURFACE TRANSPORTATION PROGRAMS

SEC. 101. EXTENSION OF FEDERAL SURFACE TRANSPORTATION PROGRAMS.

23 USC 101 note.

(a) **IN GENERAL.**—Except as otherwise provided in this Act, the requirements, authorities, conditions, eligibilities, limitations, and other provisions authorized under the covered laws, which would otherwise expire on or cease to apply after September 30, 2021, are incorporated by reference and shall continue in effect through the extension end date.

Incorporation by reference.

(b) **AUTHORIZATION OF APPROPRIATIONS.**—

(1) **HIGHWAY TRUST FUND.**—

(A) **HIGHWAY ACCOUNT.**—There is authorized to be appropriated from the Highway Account for fiscal year 2022, for each program with respect to which amounts are authorized to be appropriated from such account for fiscal year 2021, an amount equal to the extension fraction of the amount authorized for appropriation with respect to the program from such account under the covered laws for fiscal year 2021.

(B) **MASS TRANSIT ACCOUNT.**—There is authorized to be appropriated from the Mass Transit Account for fiscal year 2022, for each program with respect to which amounts are authorized to be appropriated from such account for fiscal year 2021, an amount equal to the extension fraction of the amount authorized for appropriation with respect to the program from such account under the covered laws for fiscal year 2021.

(2) **GENERAL FUND.**—There is authorized to be appropriated for fiscal year 2022, for each program under the covered laws with respect to which amounts are authorized to be appropriated for fiscal year 2021 from an account other than the Highway Account or the Mass Transit Account, an amount that is not less than the extension fraction of the amount authorized for appropriation with respect to the program under the covered laws for fiscal year 2021.

(c) **USE OF FUNDS.**—

(1) IN GENERAL.—Except as described in paragraph (2), amounts authorized to be appropriated for fiscal year 2022 with respect to a program under subsection (b) shall be distributed, administered, limited, and made available for obligation in the same manner as amounts authorized to be appropriated with respect to the program for fiscal year 2021 under the covered laws.

(2) APPORTIONMENT TO STATES.—

Time period.

(A) IN GENERAL.—Notwithstanding subsections (c)(2) or (e)(1) of section 104 of title 23, United States Code, the Secretary—

(i) shall not apportion on October 1, 2021, amounts authorized to be appropriated for fiscal year 2022 under subsection (b)(1)(A) with a respect to a program described in subparagraph (B); and

(ii) shall not apportion such amounts before October 15, 2021.

(B) PROGRAMS DESCRIBED.—A program referred to in subparagraph (A)(i) is a program—

(i) for which amounts are authorized to be appropriated under subsection (b)(1)(A); and

(ii) under which amounts described in clause (i) will be apportioned to States as described in section 104 of title 23, United States Code.

(C) NOTICE TO STATES.—Section 104(e)(2) of title 23, United States Code, shall not apply for fiscal year 2022.

(d) OBLIGATION LIMITATION.—

(1) IN GENERAL.—Subject to paragraph (2), a program for which amounts are authorized to be appropriated under subsection (b)(1) shall be subject to a limitation on obligations for fiscal year 2022 in an amount equal to the extension fraction of the limitation on obligations for the program for fiscal year 2021 and in the same manner as the limitation applicable with respect to the program for fiscal year 2021.

(2) FEDERAL-AID HIGHWAYS.—

(A) IN GENERAL.—In distributing a limitation on obligations for Federal-aid highways for qualifying programs, the Secretary—

(i) shall reserve, for qualifying programs, an amount of the limitation on obligations for Federal-aid highways equal to the amount calculated for the extension period for qualifying programs in effect on the date of enactment of this Act; and

Determination.

(ii) if H.R. 3684 (117th Congress) is enacted, may distribute the amount determined under clause (i) among qualifying programs (including any qualifying programs established pursuant to such H.R. 3684) in a manner determined to be appropriate by the Secretary.

(B) CALCULATION.—Notwithstanding the enactment of H.R. 3684 (117th Congress), the Secretary shall calculate the amount under subparagraph (A)(i) in the manner described in section 120(a)(4) of division L of the Consolidated Appropriations Act, 2021 (Public Law 116–260).

(C) DEFINITION OF QUALIFYING PROGRAM.—In this paragraph, the term “qualifying program” means a program for Federal-aid highways that is—

- (i) allocated by the Secretary under—
 - (I) title 23, United States Code;
 - (II) subsection (c)(1); or
 - (III) H.R. 3684 (117th Congress), if enacted;
- or
- (ii) apportioned by the Secretary under section 202 or 204 of title 23, United States Code.

SEC. 102. NATIONALLY SIGNIFICANT FREIGHT AND HIGHWAY PROJECTS.

During the extension period, until H.R. 3684 (117th Congress) is enacted, the matter preceding clause (i) in section 117(d)(2)(A) of title 23, United States Code, shall be applied—

- (1) by substituting “\$700,000,000” for “\$600,000,000”; and
- (2) by substituting “2022” for “2021”.

SEC. 103. HIGHWAY SAFETY RESEARCH AND DEVELOPMENT.

During the extension period, until H.R. 3684 (117th Congress) is enacted, section 403(h)(2) of title 23, United States Code, shall be applied—

- (1) by substituting “2022” for “2021”; and
- (2) by substituting “\$31,872,000” for “\$26,560,000”.

SEC. 104. RAIL-RELATED PROVISIONS.

During the extension period, until H.R. 3684 (117th Congress) is enacted, section 502(b)(3) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822(b)(3)) shall be applied by substituting the extension end date for “September 30, 2021”.

SEC. 105. PROHIBITION ON USE OF FUNDS.

None of the funds authorized in this Act or any other Act may be used to adjust apportionments for the Mass Transit Account or withhold funds from apportionments for the Mass Transit Account pursuant to section 9503(e)(4) of the Internal Revenue Code of 1986 in fiscal year 2022.

SEC. 106. APPALACHIAN REGIONAL COMMISSION.

During the extension period, until H.R. 3684 (117th Congress) is enacted—

- (1) section 14703 of title 40, United States Code, shall be applied—
 - (A) in subsection (a)(5), by substituting “2022” for “2021”; and
 - (B) in subsection (c), by substituting “2022” for “2021”; and
- (2) section 14704 of title 40, United States Code, shall be applied by substituting “2022” for “2021”.

SEC. 107. SPORT FISHING.

During the extension period, until H.R. 3684 (117th Congress) is enacted, section 4 of the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777c) shall be applied by substituting—

- (1) “fiscal year 2022” for “fiscal year 2021” in subsections (a) and (b)(1)(A); and
- (2) “fiscal years 2016 through 2022” for “fiscal years 2016 through 2021” in subsection (b)(2)(A).

23 USC 101 note. **SEC. 108. FEDERAL EMPLOYEE COMPENSATION FOLLOWING HIGHWAY TRUST FUND EXPIRATION.**

(a) **IN GENERAL.**—Each employee of the United States Government furloughed as a result of a covered lapse in Highway Trust Fund expenditure authority shall be paid for the period of the covered lapse, and each excepted employee who is required to perform work during a covered lapse shall be paid for such work, at the employee’s standard rate of pay, at the earliest date possible after the covered lapse ends, regardless of scheduled pay dates, and subject to availability of funds.

Definition.
Time period.

(b) **COVERED LAPSE.**—In this section, the term “covered lapse in Highway Trust Fund expenditure authority” means any lapse in authority to make expenditures from the Highway Trust Fund that begins on October 1, 2021 and ends on or before the date of enactment of this Act.

TITLE II—TRUST FUNDS

SEC. 201. EXTENSION OF EXPENDITURE AUTHORITY FOR HIGHWAY TRUST FUND, SPORT FISH RESTORATION AND BOATING TRUST FUND, AND LEAKING UNDERGROUND STORAGE TANK TRUST FUND.

26 USC 9503. (a) **HIGHWAY TRUST FUND.**—Section 9503 of the Internal Revenue Code of 1986 is amended—

(1) by striking “October 1, 2021” in subsections (b)(6)(B), (c)(1), and (e)(3) and inserting “November 1, 2021”, and

(2) by striking “Continuing Appropriations Act, 2021 and Other Extensions Act” in subsections (c)(1) and (e)(3) and inserting “Surface Transportation Extension Act of 2021”.

26 USC 9504. (b) **SPORT FISH RESTORATION AND BOATING TRUST FUND.**—Section 9504 of such Code is amended—

(1) by striking “Continuing Appropriations Act, 2021 and Other Extensions Act” each place it appears in subsection (b)(2) and inserting “Surface Transportation Extension Act of 2021”, and

(2) by striking “October 1, 2021” in subsection (d)(2) and inserting “November 1, 2021”.

26 USC 9508. (c) **LEAKING UNDERGROUND STORAGE TANK TRUST FUND.**—Section 9508(e)(2) of such Code is amended by striking “October 1, 2021” and inserting “November 1, 2021”.

Effective date.
26 USC 9503
note.

(d) **SPECIAL RULE FOR EXECUTION OF AMENDMENTS.**—On the date of enactment of H.R. 3684 (117th Congress)—

(1) this section and the amendments made by this section shall cease to be effective;

(2) the text of the laws amended by this section shall revert back so as to read as the text read on the day before the date of enactment of this section; and

(3) the amendments made by H.R. 3684 (117th Congress) shall be executed as if this section had not been enacted.

TITLE III—REPLACEMENT AUTHORIZATION

SEC. 301. RESCISSION OF DUPLICATIVE CONTRACT AUTHORITY.

(a) **IN GENERAL.**—Upon enactment of H.R. 3684 (117th Congress), subject to subsections (c) and (d), for each program described in subsection (b), there is permanently rescinded an amount of contract authority equal to the contract authority made available for that program under section 101.

(b) **PROGRAMS DESCRIBED.**—A program referred to in subsection (a) is a program for which contract authority was made available for fiscal year 2022 under both section 101 and H.R. 3684 (117th Congress).

(c) **IMPLEMENTATION.**—

(1) **APPLICATION OF RESCISSION AMONG CERTAIN PROGRAMS.**—The amount of contract authority rescinded under subsection (a) shall be applied among States for apportioned programs in the same amounts that contract authority would be apportioned to such States and distributed for such apportioned programs under section 101.

(2) **SUBSTANTIALLY SIMILAR AND SUCCESSOR PROGRAMS.**—The Secretary may implement subsection (a) in a manner that, as determined appropriate by the Secretary, accommodates a circumstance in which—

Determination.

(A) section 101 makes available contract authority for fiscal year 2022 for a program; and

(B) H.R. 3684 (117th Congress) makes available contract authority for fiscal year 2022 for a program that is, in the judgment of the Secretary, substantially similar or a successor to the program referred to in subparagraph (A).

(d) **DEADLINE.**—The Secretary shall implement the rescission under subsection (a) not later than September 30, 2022.

(e) **APPORTIONMENT EXCEPTION.**—Notwithstanding subsection (c)(2) or (e)(1) of section 104 of title 23, United States Code, or section 101(c)(2), the Secretary shall not be required to apportion any amounts of contract authority that are rescinded pursuant to this section.

SEC. 302. PRIOR ENACTED AUTHORIZATION.

If H.R. 3684 (117th Congress) is enacted before the date of enactment of this Act, this Act shall not take effect and the provisions of this Act shall not be executed.

Approved October 2, 2021.

LEGISLATIVE HISTORY—H.R. 5434:

CONGRESSIONAL RECORD, Vol. 167 (2021):

Oct. 1, considered and passed House.

Oct. 2, considered and passed Senate.