

112TH CONGRESS  
1ST SESSION

# H. R. 2350

To secure public investments in transportation infrastructure.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 24, 2011

Mr. DEFAZIO (for himself, Ms. SLAUGHTER, Mr. RYAN of Ohio, and Mr. CARSON of Indiana) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on the Budget, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To secure public investments in transportation infrastructure.

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 “Protecting Taxpayers  
5       in Transportation Asset Transfers Act”.

6       **SEC. 2. DEFINITIONS.**

7       In this Act:

8               (1) **ASSET TRANSACTION.**—The term “asset  
9       transaction” means—

1 (A) a concession agreement for a public  
2 transportation asset; or

3 (B) a contract for the sale or lease of a  
4 public transportation asset between the State or  
5 local government with jurisdiction over the pub-  
6 lic transportation asset and a private individual  
7 or entity.

8 (2) CONCESSION AGREEMENT.—

9 (A) IN GENERAL.—The term “concession  
10 agreement” means an agreement entered into  
11 by a private individual or entity and a State or  
12 local government with jurisdiction over a public  
13 transportation asset to convey to the private in-  
14 dividual or entity the right to manage, operate,  
15 and maintain the public transportation asset for  
16 a specific period of time in exchange for the au-  
17 thorization to impose and collect a toll or other  
18 user fee from a person for each use of the pub-  
19 lic transportation asset during that period.

20 (B) EXCLUSION.—The term “concession  
21 agreement” does not include an agreement en-  
22 tered into by a State or local government and  
23 a private individual or entity for the construc-  
24 tion of any new public transportation asset.

25 (3) PUBLIC TRANSPORTATION ASSET.—

1           (A) IN GENERAL.—The term “public  
2 transportation asset” means a transportation  
3 facility of any kind that was or is constructed,  
4 maintained, or upgraded before, on, or after the  
5 date of enactment of this Act using Federal  
6 funds—

7           (i)(I) the fair market value of which is  
8 more than \$500,000,000, as determined by  
9 the Secretary; and

10           (II) that has received any Federal  
11 funding, as of the date on which the deter-  
12 mination is made;

13           (ii) the fair market value of which is  
14 less than or equal to \$500,000,000, as de-  
15 termined by the Secretary; and

16           (I) that has received \$25,000,000 or  
17 more in Federal funding, as of the date on  
18 which the determination is made; or

19           (iii) in which a significant national  
20 public interest (such as interstate com-  
21 merce, homeland security, public health, or  
22 the environment) is at stake, as deter-  
23 mined by the Secretary.

1 (B) INCLUSIONS.—The term “public trans-  
2 portation asset” includes a transportation facil-  
3 ity described in subparagraph (A) that is—

4 (i) a Federal-aid highway (as defined  
5 in section 101 of title 23, United States  
6 Code);

7 (ii) a highway or mass transit project  
8 constructed using amounts made available  
9 from the Highway Account or Mass Tran-  
10 sit Account, respectively, of the Highway  
11 Trust Fund;

12 (iii) an air navigation facility (as de-  
13 fined in section 40102(a) of title 49,  
14 United States Code); or

15 (iv) a train station or multimodal sta-  
16 tion that receives a Federal grant, includ-  
17 ing any grant authorized under the Pas-  
18 senger Rail Investment and Improvement  
19 Act of 2008 (Public Law 110–432; 122  
20 Stat. 4907) or an amendment made by  
21 that Act.

22 (4) SECRETARY.—The term “Secretary” means  
23 the Secretary of Transportation.

1 **SEC. 3. PROGRAM TO SECURE PUBLIC INVESTMENTS IN**  
2 **TRANSPORTATION INFRASTRUCTURE.**

3 (a) ESTABLISHMENT.—Not later than 180 days after  
4 the date of enactment of this Act, the Secretary shall es-  
5 tablish a program under which a Federal lien shall be at-  
6 tached to each public transportation asset.

7 (b) PROHIBITION ON SALES AND LEASES.—

8 (1) IN GENERAL.—A public transportation  
9 asset to which a lien is attached under subsection  
10 (a) may not be the subject of any asset transaction  
11 unless—

12 (A) the lien is released in accordance with  
13 paragraph (2);

14 (B)(i) the private individual or entity seek-  
15 ing the asset transaction enters into an agree-  
16 ment with the Secretary described in paragraph  
17 (3)(A)(i); and

18 (ii) the State or local government or other  
19 public sponsor seeking the asset transaction en-  
20 ters into an agreement with the Secretary de-  
21 scribed in paragraph (3)(A)(ii);

22 (C) the Secretary publishes a disclosure in  
23 accordance with paragraph (4); and

24 (D) the State or local government seeking  
25 the asset transaction provides for public notice

1 and an opportunity to comment on the proposed  
2 asset transaction.

3 (2) RELEASE OF LIENS.—

4 (A) IN GENERAL.—A lien on a public  
5 transportation asset described in paragraph (1)  
6 may be released only if—

7 (i) the State or local government or  
8 other public sponsor seeking the asset  
9 transaction for the public transportation  
10 asset pays to the Secretary an amount de-  
11 termined by the Secretary under subpara-  
12 graph (B); and

13 (ii) the Secretary certifies that the re-  
14 quired agreements described in paragraph  
15 (3) have been signed, and the terms of the  
16 agreements incorporated into the terms of  
17 the asset transaction, for the public trans-  
18 portation asset.

19 (B) DETERMINATION OF REPAYMENT  
20 AMOUNT.—The Secretary shall determine the  
21 amount that is required to be paid for the re-  
22 lease of a Federal lien on a public transpor-  
23 tation asset under this paragraph, taking into  
24 account, at a minimum—

1 (i) the total amount of Federal funds  
2 that have been expended to construct,  
3 maintain, or upgrade the public transpor-  
4 tation asset;

5 (ii) the amount of Federal funding re-  
6 ceived by a State or local government  
7 based on inclusion of the public transpor-  
8 tation asset in calculations using Federal  
9 funding formulas or for Federal block  
10 grants;

11 (iii) the reasonable depreciation of the  
12 public transportation asset, including the  
13 amount of Federal funds described in  
14 clause (i) that may be offset by that depre-  
15 ciation; and

16 (iv) the loss of Federal tax revenue  
17 from bonds relating to, and the tax con-  
18 sequences of depreciation of, the public  
19 transportation asset.

20 (3) AGREEMENTS.—

21 (A) IN GENERAL.—As a condition of any  
22 new or renewed asset transaction for a public  
23 transportation asset—

24 (i) the private individual or entity  
25 seeking the asset transaction shall enter

1           into an agreement with the Secretary,  
2           which shall be incorporated into the terms  
3           of the asset transaction, under which the  
4           private individual or entity agrees—

5                       (I) to disclose and eliminate any  
6                       conflict of interest involving any party  
7                       to the agreement;

8                       (II)(aa) to adequately maintain  
9                       the condition and performance of the  
10                      public transportation asset during the  
11                      term of the asset transaction; and

12                      (bb) on the end of the term of  
13                      the asset transaction, to return the  
14                      public transportation asset to the ap-  
15                      plicable State or local government in a  
16                      state of good repair;

17                      (III) to disclose an estimated  
18                      amount of tax benefits and financing  
19                      transactions over the life of the lease  
20                      resulting from the lease or sale of the  
21                      public transportation asset;

22                      (IV) to disclose anticipated  
23                      changes in the workforce and wages,  
24                      benefits, or rules over the life of the



1 lease and an estimate of the amount  
2 of savings from those changes; and

3 (V) to provide an estimate of the  
4 revenue the transportation asset will  
5 produce for the private entity during  
6 the lease or sale period; and

7 (ii) the State or local government or  
8 other public sponsor seeking the asset  
9 transaction for the public transportation  
10 asset shall enter into an agreement with  
11 the Secretary, which shall be incorporated  
12 into the terms of the asset transaction,  
13 under which the State or local government  
14 or other public sponsor agrees—

15 (I) to pay to the Secretary the  
16 amount determined by the Secretary  
17 under paragraph (2)(B);

18 (II) to conduct an assessment of  
19 whether, and provide justification  
20 that, the asset transaction with the  
21 private entity would represent a better  
22 public and financial benefit than a  
23 similar transaction using public fund-  
24 ing or with a public (as opposed to

1 private) entity, including an assess-  
2 ment of—

3 (aa) the loss of toll revenues  
4 and other user fees relating to  
5 the public transportation asset;  
6 and

7 (bb) any impacts on other  
8 public transportation assets in  
9 the vicinity of the public trans-  
10 portation asset covered by the  
11 asset transaction;

12 (III) that, if the private indi-  
13 vidual or entity enters into bank-  
14 ruptcy, becomes insolvent, or fails to  
15 comply with all terms and conditions  
16 of the asset transaction—

17 (aa) the asset transaction  
18 shall immediately terminate; and

19 (bb) the interest in the pub-  
20 lic transportation asset conveyed  
21 by the asset transaction will im-  
22 mediately revert to the public  
23 sponsor;

24 (IV) to provide an estimate of all  
25 increased tolls and other user fees

1 that may be charged to persons using  
2 the public transportation asset during  
3 the term of the asset transaction;

4 (V) to disclose any plans the  
5 State or local government seeking the  
6 asset transaction has for up-front  
7 payments or concessions from the pri-  
8 vate individual or entity seeking the  
9 asset transaction;

10 (VI) that the Federal Govern-  
11 ment and the applicable State and  
12 local governments will retain respec-  
13 tive authority and control over deci-  
14 sions regarding transportation plan-  
15 ning and management; and

16 (VII) to prominently post or dis-  
17 play the agreement on the website of  
18 the local government or public spon-  
19 sor.

20 (B) TERM.—An agreement under this  
21 paragraph shall not exceed a reasonable term,  
22 as determined by the Secretary, in consultation  
23 with the relevant State or local government.

24 (4) PUBLICATION OF DISCLOSURE.—Not later  
25 than 90 days before the date on which an asset

1 transaction covering a public transportation asset  
2 takes effect, the Secretary shall publish in the Fed-  
3 eral Register a notice that contains—

4 (A) a copy of all agreements relating to the  
5 asset transaction between the Secretary and the  
6 public and private sponsors involved;

7 (B) a description of the total amount of  
8 Federal funds that have been expended as of  
9 the date of publication of the notice to con-  
10 struct, maintain, or upgrade the public trans-  
11 portation asset;

12 (C) the determination of the repayment  
13 amount under paragraph (2)(B) for the public  
14 transportation asset;

15 (D) the amount of Federal funding re-  
16 ceived by a State or local government based on  
17 inclusion of the public transportation asset in  
18 calculations using Federal funding formulas or  
19 for Federal block grants; and

20 (E) a certification that the asset trans-  
21 action will not adversely impact the national  
22 public interest of the United States (including  
23 the interstate commerce, homeland security,  
24 public health, and environment of the United  
25 States).

1           (5) RENEWAL OF ASSET TRANSACTION.—An  
2     asset transaction that expires or terminates may be  
3     renewed only if—

4           (A) the Secretary—

5                 (i) calculates a new repayment  
6                 amount under paragraph (2)(B) required  
7                 for renewal, as the Secretary determines to  
8                 be appropriate;

9                 (ii) takes into consideration the im-  
10                pact of a renewed agreement on nearby  
11                public transportation assets; and

12                (iii) publishes a new disclosure for the  
13                renewed agreement in accordance with  
14                paragraph (4); and

15           (B) the State or local government seeking  
16     to renew the asset transaction—

17                 (i) provides for public notice and an  
18                 opportunity to comment on the proposed  
19                 renewal;

20                 (ii) pays to the Secretary the new  
21                 amount calculated by the Secretary pursu-  
22                 ant to subparagraph (A)(i); and

23                 (iii) enters into a new agreement in  
24                 accordance with paragraph (3) for the re-  
25                 newal.

1 (c) AMTRAK.—

2 (1) IN GENERAL.—Subject to paragraph (2),  
3 the Secretary may permit a private individual or en-  
4 tity to enter into an asset transaction covering all or  
5 any portion of the facilities and equipment of the  
6 National Railroad Passenger Corporation (referred  
7 to in this subsection as “Amtrak”).

8 (2) CONDITIONS.—A private individual or enti-  
9 ty that seeks to enter into an asset transaction de-  
10 scribed in paragraph (1) shall agree—

11 (A) to enter into an agreement described  
12 in subsection (b)(3) with the Secretary covering  
13 the asset transaction; and

14 (B) to pay to the Secretary an amount  
15 equal to the amount of Federal funds provided  
16 for Amtrak during the period of fiscal year  
17 1971 through the fiscal year in which an agree-  
18 ment described in subsection (b)(3) covering the  
19 asset transaction is entered into, as adjusted  
20 by, as determined by the Secretary—

21 (i) the reasonable depreciation of the  
22 portion of Amtrak facilities and equipment  
23 covered by the agreement, including that  
24 amount of Federal funds provided for Am-

1 trak that may be offset by that deprecia-  
2 tion;

3 (ii) the amount of Federal funding re-  
4 ceived by a State or local government to  
5 upgrade any capital facilities owned or op-  
6 erated by Amtrak to facilitate passenger  
7 rail service; and

8 (iii) the loss of Federal tax revenue  
9 from bonds, Federal financing, or any tax  
10 advantages granted to Amtrak since fiscal  
11 year 1971, including financing and bond-  
12 ing covered by or provided under the Tax-  
13 payer Relief Act of 1997 (Public Law 105-  
14 34; 111 Stat. 788) or an amendment made  
15 by that Act.

16 (3) TERM, DISCLOSURE, AND RENEWAL.—Para-  
17 graphs (3)(B), (4), and (5) of subsection (b) shall  
18 apply to an asset transaction entered into under this  
19 subsection.

20 (d) USE OF FUNDS BY SECRETARY.—Funds received  
21 by the Secretary as a payment under paragraph (2)(A)(i)  
22 or (5)(B)(ii) of subsection (b) or subsection (c)(2)(B) shall  
23 be available to and used by the Secretary, without further  
24 appropriation and to remain available until expended, for  
25 transportation projects and activities in the same trans-

1 portation mode as the mode of the public transportation  
2 asset for which the payment was received.

3 (e) REGULATIONS.—Not later than 180 days after  
4 the date of enactment of this Act, the Secretary shall pro-  
5 mulgate such regulations as are necessary to implement  
6 this Act.

7 (f) REPORT TO CONGRESS.—Not later than 180 days  
8 after the date of enactment of this Act, and annually  
9 thereafter, the Secretary shall submit to Congress and  
10 publish in the Federal Register a report that describes  
11 each public transportation asset that is the subject of an  
12 asset transaction during the year covered by the report,  
13 including the total amount of Federal funds that were re-  
14 ceived by a State or local government to construct, main-  
15 tain, or upgrade the public transportation asset as of the  
16 date of submission of the report.

17 (g) AUTHORIZATION OF APPROPRIATIONS.—There  
18 are authorized to be appropriated to carry out this Act  
19 such sums as are necessary.

20 **SEC. 4. BUDGETARY EFFECTS.**

21 The budgetary effects of this Act, for the purpose of  
22 complying with the Statutory Pay-As-You-Go Act of 2010,  
23 shall be determined by reference to the latest statement  
24 titled “Budgetary Effects of PAYGO Legislation” for this  
25 Act, submitted for printing in the Congressional Record



1 by the Chairman of the House Budget Committee, pro-  
2 vided that such statement has been submitted prior to the  
3 vote on passage.

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