

117TH CONGRESS
1ST SESSION

S. 1066

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

IN THE SENATE OF THE UNITED STATES

APRIL 12, 2021

Mr. PORTMAN 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 2022 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) CLERICAL AMENDMENT.—The analysis for chap-
 2 ter 1 of title 23, United States Code, is amended by insert-
 3 ing after the item relating to section 170 the following:

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

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

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

9 **“§ 5341. Alternative funding of public transportation**
 10 **programs**

11 “(a) DEFINITIONS.—In this section—

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

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

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

21 “(A) the Safe, Accountable, Flexible, Effi-
 22 cient Transportation Equity Act: A Legacy for
 23 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) PUBLIC TRANSPORTATION ALTERNATIVE FUND-
 14 ING PROGRAM.—

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

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

11 “(3) ELIGIBLE YEARS.—A State may make an
 12 election with respect to fiscal year 2022 and any fis-
 13 cal year thereafter.

14 “(d) STATE RESPONSIBILITY.—

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

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

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

23 “(ii) which programmatic require-
 24 ments of the covered programs the State
 25 elects to continue;

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

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

10 “(D) make the annual 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 alternative funding program shall
 16 not be subject to the requirements of—

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

18 “(B) any covered program not under this
 19 chapter;

20 “(C) title 23; or

21 “(D) any other Federal law (including reg-
 22 ulations).

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

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

7 “(f) TRANSFERS.—

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

16 “(2) TRANSFERS UNDER PROGRAM.—

17 “(A) IN GENERAL.—Transfers under the
 18 alternative funding program—

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

23 “(ii) shall—

24 “(I) be made on the basis of esti-
 25 mates by the Secretary, in consulta-

tion with the Secretary of the Treasury, based on the most recent data available; and

“(II) include proper adjustments in amounts subsequently transferred under the alternative funding program, to the extent prior estimates were in excess of, or less than, the amounts required to be transferred under the alternative funding program.

“(B) LIMITATION.—

“(i) IN GENERAL.—An adjustment under subparagraph (A)(ii)(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)(II) exceeds the percentage described in clause (i) of this subparagraph, the excess shall be taken into account in making subsequent adjustments under subparagraph (A)(ii)(II).

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

6 “(h) MAINTENANCE OF EFFORT.—

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

23 “(i) TREATMENT OF GENERAL REVENUES.—For
 24 purposes of this section, any general revenue funds appro-
 25 priated to the Mass Transit Account of the Highway Trust

1 Fund shall be transferred to a State under the alternative
2 funding program in the manner described in subsection
3 (f)(1).”.

4 (b) CLERICAL AMENDMENT.—The analysis for chap-
5 ter 53 of title 49, United States Code, is amended by in-
6 serting after the item relating to section 5340 the fol-
7 lowing:

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

