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112TH CONGRESS  
1ST SESSION

# H. R. 1585

To allow States to elect to receive contributions to the Highway Trust Fund in lieu of participating in the Federal-aid highway program or certain public transportation programs.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 15, 2011

Mr. LANKFORD introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

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## A BILL

To allow States to elect to receive contributions to the Highway Trust Fund in lieu of participating in the Federal-aid highway program or certain public transportation programs.

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 Highway Flexi-  
5 bility Act".

1 **SEC. 2. DIRECT FEDERAL-AID HIGHWAY PROGRAM.**

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

5 **“§ 150. Direct Federal-Aid highway program**

6 “(a) ELECTION BY STATE NOT TO PARTICIPATE.—  
7 Notwithstanding any other provision of law, a State may  
8 elect not to participate in a Federal program relating to  
9 highways, including any Federal highway program under  
10 the Safe, Accountable, Flexible, Efficient Transportation  
11 Equity Act: A Legacy for Users (Public Law 109–59), this  
12 title, or title 49.

13 “(b) DIRECT FEDERAL-AID HIGHWAY PROGRAM.—  
14 Beginning in fiscal year 2011, the Secretary shall carry  
15 out a direct Federal-aid highway program in accordance  
16 with the requirements of this section. Under the program,  
17 the Governor or chief executive officer of a State may  
18 elect, not fewer than 90 days before the beginning of a  
19 fiscal year—

20 “(1) to waive the right of the State to receive  
21 amounts apportioned or allocated to it under the  
22 Federal-aid highway program for the fiscal year to  
23 which the election relates; and

24 “(2) to receive instead the amount determined  
25 under subsection (e) for that fiscal year.

26 ~~“(c) STATE RESPONSIBILITY.—~~

## 3

1           “(1) IN GENERAL.—The Governor or chief ex-  
2           ecutive officer of a State making an election under  
3           subsection (b) shall—

4                   “(A) agree to maintain the Interstate Sys-  
5                   tem in accordance with its current Interstate  
6                   System program;

7                   “(B) submit a plan to the Secretary de-  
8                   scribing—

9                           “(i) the purposes, projects, and uses  
10                           to which amounts received under the direct  
11                           Federal-aid highway program will be put;  
12                           and

13                           “(ii) which programmatic require-  
14                           ments of this title the State elects to con-  
15                           tinue;

16                   “(C) agree to obligate or expend amounts  
17                   received under the direct Federal-aid highway  
18                   program exclusively for projects that would be  
19                   eligible for funding under section 133(b) if the  
20                   State was not participating in the program; and

21                   “(D) agree to report annually to the Sec-  
22                   retary on the use of amounts received under the  
23                   direct Federal-aid highway program and to  
24                   make the report available to the public in an  
25                   easily accessible format.

1           “(2) NO LIMITATION ON USE OF FUNDS.—Ex-  
2           cept as provided in paragraph (1), the expenditure  
3           or obligation of funds received by a State under the  
4           direct Federal-aid highway program shall not be  
5           subject to regulation under this title (except for this  
6           section), title 49, or any other Federal law.

7           “(3) ELECTION IRREVOCABLE.—An election  
8           under subsection (b) shall be irrevocable during the  
9           applicable fiscal year.

10          “(d) EFFECT ON PRE-EXISTING COMMITMENTS.—  
11          The making of an election under subsection (b) shall not  
12          affect any responsibility or commitment of the State under  
13          this title for any fiscal year with respect to—

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

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

19          “(e) TRANSFERS.—

20               “(1) IN GENERAL.—The amount to be trans-  
21               ferred to a State under the direct Federal-aid high-  
22               way program for a fiscal year shall be the portion  
23               of the taxes appropriated to the Highway Trust  
24               Fund under section 9503 of the Internal Revenue  
25               Code of 1986, other than for the Mass Transit Ac-

1 count, for that fiscal year that is attributable to  
2 highway users in that State during that fiscal year,  
3 reduced by a pro rata share withheld by the Sec-  
4 retary to fund contract authority for programs of  
5 the National Highway Traffic Safety Administration  
6 and the Federal Motor Carrier Safety Administra-  
7 tion.

8 “(2) TRANSFERS.—

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

11 “(i) shall be made at the same time as  
12 deposits to the Highway Trust Fund are  
13 made by the Secretary of the Treasury;  
14 and

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

24 “(B) LIMITATION.—An adjustment under  
25 subparagraph (A)(ii) to any transfer may not

1           exceed 5 percent of the transferred amount to  
2           which the adjustment relates. If the adjustment  
3           required under subparagraph (A)(ii) exceeds  
4           that percentage, the excess shall be taken into  
5           account in making subsequent adjustments  
6           under subparagraph (A)(ii).

7           “(f) APPLICATION WITH OTHER AUTHORITY.—  
8           There shall be rescinded or canceled any contract author-  
9           ity under this chapter (and any obligation limitation) for  
10          a State for a fiscal year for which an election by that State  
11          is in effect under subsection (b).

12          “(g) MAINTENANCE OF EFFORT.—  
13                 “(1) IN GENERAL.—Not later than 30 days  
14                 after the date on which an amount is distributed to  
15                 a State or State agency under the State Highway  
16                 Flexibility Act or an amendment made by that Act,  
17                 the Governor or chief executive officer of the State  
18                 shall certify to the Secretary that the State will  
19                 maintain the effort of the State with regard to State  
20                 funding for the types of projects that are funded by  
21                 the amounts.

22                 “(2) AMOUNTS.—As part of the certification,  
23                 the Governor or chief executive officer shall submit  
24                 to the Secretary a statement identifying the amount  
25                 of funds the State plans to expend from State

1 sources during the covered period, for the types of  
2 projects that are funded by the amounts.

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

8 (b) CONFORMING AMENDMENT.—The analysis for  
9 title 23, United States Code, is amended by inserting after  
10 the item relating to section 149 the following:

“150. Direct Federal-aid highway program.”

11 **SEC. 3. ALTERNATIVE FUNDING OF PUBLIC TRANSPOR-**  
12 **TATION PROGRAMS.**

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

16 **“§ 5341. Alternative funding of public transportation**  
17 **programs**

18 “(a) DEFINITIONS.—In this section—

19 “(1) the term ‘alternative funding program’  
20 means the program established under subsection (c);  
21 and

22 “(2) the term ‘covered programs’ means the  
23 programs authorized under—

1           “(A) sections 5305, 5307, 5308, 5309,  
2           5310, 5311, 5316, 5317, 5320, 5335, 5339,  
3           and 5340 of title 49, United States Code; and

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

6           “(b) ELECTION BY STATE NOT TO PARTICIPATE.—  
7           Notwithstanding any other provision of law, a State may  
8           elect not to participate in a Federal program relating to  
9           public transportation, including any Federal public trans-  
10          portation program under the Safe, Accountable, Flexible,  
11          Efficient Transportation Equity Act: A Legacy for Users  
12          (Public Law 109–59; 119 Stat. 1144), title 23, or this  
13          title.

14          “(c) PUBLIC TRANSPORTATION PROGRAM.—

15                 “(1) PROGRAM ESTABLISHED.—Beginning in  
16                 fiscal year 2011, the Secretary shall carry out an al-  
17                 ternative funding program under which the Governor  
18                 or chief executive officer of a State may elect, not  
19                 fewer than 90 days before the beginning of a fiscal  
20                 year—

21                         “(A) to waive the right of the State to re-  
22                         ceive amounts apportioned or allocated to it  
23                         under the covered programs for the fiscal year  
24                         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 (e).

4           “(2) PROGRAM REQUIREMENTS.—

5           “(A) IN GENERAL.—The Governor or chief  
6           executive officer of a State that participates in  
7           the alternative funding program shall—

8                   “(i) submit a plan to the Secretary  
9                   describing—

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

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

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

24                           “(iii) submit an annual report to the  
25                           Secretary on the use of amounts received

1 under the alternative funding program,  
2 and to make the report available to the  
3 public in an easily accessible format.

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

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

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

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

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

23 “(e) TRANSFERS.—

24 “(1) IN GENERAL.—The amount to be trans-  
25 ferred to a State under the alternative funding pro-

1       gram for a fiscal year shall be the portion of the  
2       taxes transferred to the Mass Transit Account of the  
3       Highway Trust Fund under section 9503(e) of the  
4       Internal Revenue Code of 1986, for that fiscal year,  
5       that is attributable to highway users in that State  
6       during that fiscal year.

7               “(2) TRANSFERS.—

8                       “(A) IN GENERAL.—Transfers under the  
9       program—

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

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

23                               “(B) LIMITATION.—An adjustment under  
24       subparagraph (A)(ii) to any transfer may not  
25       exceed 5 percent of the transferred amount to

1           which the adjustment relates. If the adjustment  
2           required under subparagraph (A)(ii) exceeds  
3           that percentage, the excess shall be taken into  
4           account in making subsequent adjustments  
5           under subparagraph (A)(ii).

6           “(f) CONTRACT AUTHORITY.—There shall be re-  
7 scinded or canceled any contract authority under this  
8 chapter (and any obligation limitation) for a State for a  
9 fiscal year for which the State elects to participate in the  
10 alternative funding program.

11           “(g) MAINTENANCE OF EFFORT.—

12           “(1) IN GENERAL.—Not later than 30 days  
13 after the date on which an amount is distributed to  
14 a State or State agency under the State Highway  
15 Flexibility Act or an amendment made by that Act,  
16 the Governor or chief executive officer of the State  
17 shall certify to the Secretary that the State will  
18 maintain the effort of the State with regard to State  
19 funding for the types of projects that are funded by  
20 the amounts.

21           “(2) AMOUNTS.—The certification under para-  
22 graph (1) shall include a statement identifying the  
23 amount of funds the State plans to expend from  
24 State sources for projects funded under the alter-  
25 native funding program, during the fiscal year for

1       which the State elects to participate in the alter-  
2       native funding program.

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

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

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

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