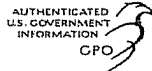


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II

112TH CONGRESS  
1ST SESSION

# S. 1446

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

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IN THE SENATE OF THE UNITED STATES

JULY 28, 2011

Mr. COBURN (for himself, Mr. MCCAIN, Mr. LEE, Mr. DEMINT, Mr. PAUL, Mr. VITTER, Mr. KYL, Mr. CORNYN, Mr. HATCH, Mr. COATS, Mr. CHAMBLISS, Mr. BURR, Mr. ISAKSON, and Mr. PORTMAN) 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 149 the  
9 following:

1 **“§ 150. 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 SAFETEA-LU (Public Law 109–59; 119 Stat.  
7 1144), this title, or title 49.

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

9           “(1) IN GENERAL.—Beginning in fiscal year  
10 2011, the Secretary shall carry out a direct Federal-  
11 aid highway program in accordance with the require-  
12 ments of this section under which the legislature of  
13 a State may elect, not fewer than 90 days before the  
14 beginning of a fiscal year—

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

20           “(B) to receive an amount for that fiscal  
21 year that is determined in accordance with sub-  
22 section (e) for that fiscal year.

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

1           “(A) assumes all Federal obligations relat-  
2           ing to each program that is the subject of the  
3           election; and

4           “(B) shall fulfill those obligations using  
5           the amounts transferred to the State under  
6           subsection (e).

7           “(c) STATE RESPONSIBILITY.—

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

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

13           “(B) submit a plan to the Secretary de-  
14           scribing—

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

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

21           “(C) agree to obligate or expend amounts  
22           received under the direct Federal-aid highway  
23           program exclusively for projects that would be  
24           eligible for funding under section 133(b) if the  
25           State was not participating in the program; and

4

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

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

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

16          “(d) EFFECT ON PREEXISTING COMMITMENTS.—  
17          The making of an election under subsection (b) 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 an election under  
24                 subsection (b) is not in effect.

25          “(e) TRANSFERS.—

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

14          “(2) TRANSFERS UNDER PROGRAM.—

15                 “(A) IN GENERAL.—Transfers under the  
16                 program—

17                         “(i) shall be made at the same time as  
18                         deposits to the Highway Trust Fund are  
19                         made by the Secretary of the Treasury;  
20                         and

21                         “(ii) shall be made on the basis of es-  
22                         timates by the Secretary, in consultation  
23                         with the Secretary of the Treasury, based  
24                         on the most recent data available, and  
25                         proper adjustments shall be made in

1            amounts subsequently transferred to the  
2            extent prior estimates were in excess of, or  
3            less than, the amounts required to be  
4            transferred.

5            “(B) LIMITATION.—An adjustment under  
6            subparagraph (A)(ii) to any transfer may not  
7            exceed 5 percent of the transferred amount to  
8            which the adjustment relates. If the adjustment  
9            required under subparagraph (A)(ii) exceeds  
10           that percentage, the excess shall be taken into  
11           account in making subsequent adjustments  
12           under subparagraph (A)(ii).

13           “(f) APPLICATION WITH OTHER AUTHORITY.—Any  
14           contract authority under this chapter (and any obligation  
15           limitation) authorized for a State for a fiscal year for  
16           which an election by that State is in effect under sub-  
17           section (b)—

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

19                  “(2) shall not be reallocated or distributed to  
20           any other State under the Federal-aid highway pro-  
21           gram.

22           “(g) MAINTENANCE OF EFFORT.—

23                  “(1) IN GENERAL.—Not later than 30 days  
24           after the date on which an amount is distributed to  
25           a State or State agency under the State Highway

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1 Flexibility Act or an amendment made by that Act,  
 2 the Governor of the State shall certify to the Sec-  
 3 retary that the State will maintain the effort of the  
 4 State with regard to State funding for the types of  
 5 projects that are funded by the amounts.

6 “(2) AMOUNTS.—As part of the certification,  
 7 the Governor shall submit to the Secretary a state-  
 8 ment identifying the amount of funds the State  
 9 plans to expend from State sources during the cov-  
 10 ered period, for the types of projects that are funded  
 11 by the amounts.

12 “(h) TREATMENT OF GENERAL REVENUES.—For  
 13 purposes of this section, any general revenue funds appro-  
 14 priated to the Highway Trust Fund shall be transferred  
 15 to a State under the program in the manner described  
 16 in subsection (e)(1).”.

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

“150. Direct Federal-aid highway program”.

20 **SEC. 3. ALTERNATIVE FUNDING OF PUBLIC TRANSPOR-**  
 21 **TATION PROGRAMS.**

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

1 **“§ 5341. Alternative funding of public transportation**  
2 **programs**

3 “(a) DEFINITIONS.—In this section—

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

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

9 “(A) sections 5305, 5307, 5308, 5309,  
10 5310, 5311, 5316, 5317, 5320, 5335, 5339,  
11 and 5340; and

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

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

15 “(1) IN GENERAL.—Notwithstanding any other  
16 provision of law, a State may elect not to participate  
17 in all Federal programs relating to public transpor-  
18 tation funded under the Mass Transit Account of  
19 the Highway Trust Fund, including the Federal  
20 public transportation programs under the  
21 SAFETEA-LU (Public Law 109-59; 119 Stat.  
22 1144), title 23, or this title.

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

1           “(A) assumes all Federal obligations relat-  
2           ing to each program that is the subject of the  
3           election; and

4           “(B) shall fulfill those obligations using  
5           the amounts transferred to the State under  
6           subsection (e).

7           “(c) PUBLIC TRANSPORTATION PROGRAM.—

8           “(1) PROGRAM ESTABLISHED.—Beginning in  
9           fiscal year 2011, the Secretary shall carry out an al-  
10          ternative funding program under which the legisla-  
11          ture of a State may elect, not fewer than 90 days  
12          before the beginning of a fiscal year—

13           “(A) to waive the right of the State to re-  
14           ceive amounts apportioned or allocated to the  
15           State under the covered programs for the fiscal  
16           year to which the election relates; and

17           “(B) to receive an amount for that fiscal  
18           year that is determined in accordance with sub-  
19           section (e).

20          “(2) PROGRAM REQUIREMENTS.—

21           “(A) IN GENERAL.—The Governor of a  
22           State that participates in the alternative fund-  
23           ing program shall—

24           “(i) submit a plan to the Secretary  
25           describing—

10

1           “(I) the purposes, projects, and  
2           uses to which amounts received under  
3           the alternative funding program will  
4           be put; and

5           “(II) which programmatic re-  
6           quirements of this title the State  
7           elects to continue;

8           “(ii) agree to obligate or expend  
9           amounts received under the alternative  
10          funding program exclusively for projects  
11          that would be eligible for funding under  
12          the covered programs if the State was not  
13          participating in the alternative funding  
14          program; and

15          “(iii) submit to the Secretary an an-  
16          nual report on the use of amounts received  
17          under the alternative funding program,  
18          and to make the report available to the  
19          public in an easily accessible format.

20          “(B) NO FEDERAL LIMITATION ON USE OF  
21          FUNDS.—Except as provided in subparagraph  
22          (A), the expenditure or obligation of funds re-  
23          ceived by a State under the alternative funding  
24          program shall not be subject to the provisions

1 of this title (except for this section), title 23, or  
 2 any other Federal law.

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

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

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

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

15 “(e) TRANSFERS.—

16 “(1) IN GENERAL.—The amount to be trans-  
 17 ferred to a State under the alternative funding pro-  
 18 gram for a fiscal year shall be the portion of the  
 19 taxes transferred to the Mass Transit Account of the  
 20 Highway Trust Fund under section 9503(e) of the  
 21 Internal Revenue Code of 1986, for that fiscal year,  
 22 that is attributable to highway users in that State  
 23 during that fiscal year.

24 “(2) TRANSFERS.—

1           “(A) IN GENERAL.—Transfers under the  
2 program—

3           “(i) shall be made at the same time as  
4 transfers to the Mass Transit Account of  
5 the Highway Trust Fund are made by the  
6 Secretary of the Treasury; and

7           “(ii) shall be made on the basis of es-  
8 timates by the Secretary, in consultation  
9 with the Secretary of the Treasury, based  
10 on the most recent data available, and  
11 proper adjustments shall be made in  
12 amounts subsequently transferred, to the  
13 extent prior estimates were in excess of, or  
14 less than, the amounts required to be  
15 transferred.

16           “(B) LIMITATION.—An adjustment under  
17 subparagraph (A)(ii) to any transfer may not  
18 exceed 5 percent of the transferred amount to  
19 which the adjustment relates. If the adjustment  
20 required under subparagraph (A)(ii) exceeds  
21 that percentage, the excess shall be taken into  
22 account in making subsequent adjustments  
23 under subparagraph (A)(ii).

24           “(f) CONTRACT AUTHORITY.—There shall be re-  
25 scinded or canceled any contract authority under this

1 chapter (and any obligation limitation) authorized for a  
2 State for a fiscal year for which the State elects to partici-  
3 pate in the alternative funding program.

4 “(g) MAINTENANCE OF EFFORT.—

5 “(1) IN GENERAL.—Not later than 30 days  
6 after the date on which an amount is distributed to  
7 a State or State agency under the State Highway  
8 Flexibility Act or an amendment made by that Act,  
9 the Governor of the State shall certify to the Sec-  
10 retary that the State will maintain the effort of the  
11 State with regard to State funding for the types of  
12 projects that are funded by the amounts.

13 “(2) AMOUNTS.—The certification under para-  
14 graph (1) shall include a statement identifying the  
15 amount of funds the State plans to expend from  
16 State sources for projects funded under the alter-  
17 native funding program, during the fiscal year for  
18 which the State elects to participate in the alter-  
19 native funding program.

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

14

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

“5341. Alternative funding of public transportation programs”.

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