

117TH CONGRESS  
1ST SESSION

# S. 1066

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

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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

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## 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-

1           tion with the Secretary of the Treas-  
2           ury, based on the most recent data  
3           available; and

4                   “(II) include proper adjustments  
5           in amounts subsequently transferred  
6           under the alternative funding pro-  
7           gram, to the extent prior estimates  
8           were in excess of, or less than, the  
9           amounts required to be transferred  
10          under the alternative funding pro-  
11          gram.

12          “(B) LIMITATION.—

13                   “(i) IN GENERAL.—An adjustment  
14          under subparagraph (A)(ii)(II) to any  
15          transfer may not exceed 5 percent of the  
16          transferred amount to which the adjust-  
17          ment relates.

18                   “(ii) ADJUSTMENT GREATER THAN 5  
19          PERCENT.—If the adjustment required  
20          under subparagraph (A)(ii)(II) exceeds the  
21          percentage described in clause (i) of this  
22          subparagraph, the excess shall be taken  
23          into account in making subsequent adjust-  
24          ments 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.”.

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