

112TH CONGRESS  
1ST SESSION

# S. 252

To permit a State to elect to receive the contributions of the State to the Highway Trust Fund in lieu of the Federal-aid highway program apportionment of the State for the subsequent fiscal year, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

Mrs. HUTCHISON 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 permit a State to elect to receive the contributions of the State to the Highway Trust Fund in lieu of the Federal-aid highway program apportionment of the State for the subsequent fiscal year, 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 “Highway Fairness and  
5 Reform Act of 2011”.

1 **SEC. 2. ELECTION TO RECEIVE STATE CONTRIBUTION TO**  
 2 **HIGHWAY TRUST FUND IN LIEU OF PARTICI-**  
 3 **PATING IN FEDERAL-AID HIGHWAY PRO-**  
 4 **GRAM.**

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

8 **“§ 150. Direct Federal-aid highway program**

9 “(a) PROGRAM.—

10 “(1) IN GENERAL.—Beginning with fiscal year  
 11 2011, the Secretary shall carry out a direct Federal-  
 12 aid highway program in accordance with this section  
 13 under which the Governor or chief executive officer  
 14 of a State may elect, not less than 90 days before  
 15 the beginning of each fiscal year—

16 “(A) to have the State waive the right of  
 17 the State to receive amounts apportioned or al-  
 18 located to the State under the Federal-aid high-  
 19 way program for the fiscal year to which the  
 20 election relates; and

21 “(B) to receive instead the amount deter-  
 22 mined under subsection (d) for that fiscal year.

23 “(2) FORM AND NATURE OF ELECTION.—An  
 24 election under this subsection shall be made in such  
 25 form and manner as the Secretary may require and  
 26 shall be irrevocable.

1 “(b) STATE RESPONSIBILITY.—

2 “(1) IN GENERAL.—The Secretary shall accept  
3 an election under subsection (a) if the Secretary de-  
4 termines that the State making the election—

5 “(A) has an Interstate maintenance pro-  
6 gram and agrees to maintain the portions of  
7 the Interstate System in the State in accord-  
8 ance with that program;

9 “(B) submits a plan to the Secretary de-  
10 scribing—

11 “(i) the purposes, projects, and uses  
12 to which amounts received under the pro-  
13 gram will be put; and

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

17 “(C) agrees to obligate or expend amounts  
18 received under the program exclusively for  
19 projects that would be eligible for funding  
20 under section 133(b) if the State were not par-  
21 ticipating in the program; and

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

1           “(2) SAFETY REQUIREMENTS.—The Secretary  
2           may determine that requirements important for  
3           transportation safety continue to apply to a State  
4           that makes an election under subsection (a).

5           “(3) SURFACE TRANSPORTATION PROGRAM.—A  
6           State that makes an election under subsection (a)  
7           shall continue to suballocate funds to urbanized  
8           areas and other areas using the formulae and rules  
9           under section 133(d)(3).

10           “(4) NO LIMITATION ON USE OF FUNDS.—Ex-  
11           cept as provided in paragraphs (1), (2), and (3), the  
12           expenditure or obligation of funds received by the  
13           State under the program is not subject to regulation  
14           under this title or title 49.

15           “(c) EFFECT ON PRE-EXISTING OBLIGATIONS.—The  
16           making of an election under subsection (a) shall not affect  
17           any obligation, responsibility, or commitment of the State  
18           under this title for any fiscal year with respect to—

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

21           “(2) any project or program funded under this  
22           title in any fiscal year for which an election under  
23           subsection (a) is not in effect.

24           “(d) TRANSFERS.—

1           “(1) IN GENERAL.—The amount to be trans-  
2           ferred to a State under the program for a fiscal year  
3           shall be the portion of the tax revenue appropriated  
4           to the Highway Trust Fund under section 9503 of  
5           the Internal Revenue Code of 1986, other than for  
6           the Mass Transit Account, for a fiscal year for  
7           which an election is in effect under subsection (a)  
8           that is attributable to highway users in that State  
9           during that fiscal year, reduced by a pro rata share  
10          withheld by the Secretary to fund contract authority  
11          for programs of the National Highway Traffic Safe-  
12          ty Administration and the Federal Motor Carrier  
13          Safety Administration.

14          “(2) GENERAL FUND AMOUNTS.—For purposes  
15          of paragraph (1), any amounts deposited in or cred-  
16          ited to the Highway Trust Fund from the general  
17          fund of the Treasury shall be treated as if the  
18          amounts were amounts received as tax revenue and  
19          appropriated to the Fund.

20          “(3) TRANSFERS.—

21                 “(A) IN GENERAL.—Transfers under the  
22                 program shall be made—

23                         “(i) at the same time as deposits to  
24                         the Highway Trust Fund are made by the  
25                         Secretary of the Treasury; and

1                   “(ii) on the basis of estimates by the  
2                   Secretary, in consultation with the Sec-  
3                   retary of the Treasury.

4                   “(B) ADJUSTMENTS.—Subject to subpara-  
5                   graph (C), proper adjustments shall be made in  
6                   amounts subsequently transferred under this  
7                   paragraph to the extent prior estimates were in  
8                   excess of, or less than, the amounts required to  
9                   be transferred.

10                  “(C) LIMITATION.—With respect to an ad-  
11                  justment under subparagraph (B) to any trans-  
12                  fer—

13                         “(i) the adjustment may not exceed 5  
14                         percent of the transferred amount to which  
15                         the adjustment relates; and

16                         “(ii) if the adjustment required ex-  
17                         ceeds that percentage, the excess shall be  
18                         taken into account in making subsequent  
19                         adjustments under that subparagraph.

20                  “(e) APPLICATION WITH OTHER AUTHORITY.—The  
21                  Secretary shall rescind or cancel any contract authority  
22                  under this chapter (and any obligation limitation) for a  
23                  State for a fiscal year for which an election by that State  
24                  is in effect under subsection (a).”.

1           (b) CONFORMING AMENDMENT.—The analysis for  
2 chapter 1 of title 23, United States Code, is amended by  
3 inserting after the item relating to section 149 the fol-  
4 lowing:

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

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