II

116TH CONGRESS
1ST SESSION

S. 615

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

IN THE SENATE OF THE UNITED STATES

FEBRUARY 28, 2019

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "State Transportation Flexibility Act".

SEC. 2. DIRECT FEDERAL-AID HIGHWAY PROGRAM.

(a) IN GENERAL.—Chapter 1 of title 23, United States Code, is amended by adding at the end the following:

"§ 171. Direct Federal-aid highway program

"(a) ELECTION BY STATE NOT TO PARTICIPATE.—Notwithstanding any other provision of law and in accordance with this section, a State may elect not to participate in any Federal program relating to highways, including a Federal highway program under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Public Law 109–59; 119 Stat. 1144), the Moving Ahead for Progress in the 21st Century Act (Public Law 112–141; 126 Stat. 405), the Fixing America's Surface Transportation Act (Public Law 114–94; 129 Stat. 1312), this title, or title 49.

"(b) DIRECT FEDERAL-AID HIGHWAY PROGRAM.—

"(1) IN GENERAL.—The Secretary shall carry out a direct Federal-aid highway program (referred to in this section as the 'program') in accordance with the requirements of this section under which the legislature of a State may elect, not fewer than 90 days before the beginning of a fiscal year—

"(A) to waive the right of the State to receive amounts apportioned or allocated to the State under this chapter for the fiscal year to which the election relates; and

"(B) to receive an amount for that fiscal year that is determined in accordance with subsection (e) for that fiscal year.

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

"(A) assumes all Federal obligations relating to each program that is the subject of the election; and

"(B) shall fulfill those obligations using the amounts transferred to the State under subsection (e).

"(3) ELIGIBLE YEARS.—A State may make an election with respect to fiscal year 2020 and any fiscal year thereafter.

"(c) STATE RESPONSIBILITY.—

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

"(A) agree to maintain the Interstate System in accordance with the current Interstate System program;

"(B) submit a plan to the Secretary describing—

"(i) the purposes, projects, and uses to which amounts received under the program will be put; and

"(ii) which programmatic requirements of this title the State elects to continue;

"(C) agree to obligate or expend amounts received under the program exclusively for projects that would be eligible for funding under section 133(b) if the State was not participating in the program; and

"(D) agree—

"(i) to report annually to the Secretary on the use of amounts received under the program; and

"(ii) to make the report available to the public in an easily accessible format.

"(2) NO FEDERAL LIMITATION ON USE OF FUNDS.—Except as provided in paragraph (1), the expenditure or obligation of funds received by a State under the program shall not be subject to any Federal requirement under this title (except for this section), title 49, or any other Federal law (including regulations).

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

"(d) EFFECT ON PREEXISTING COMMITMENTS.—An election under subsection (b) shall not affect any responsibility or commitment of the State under this title for any fiscal year with respect to—

"(1) a project or program funded under this title (other than under this section); or

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

"(e) TRANSFERS.—

"(1) IN GENERAL.—The amount to be transferred to a State under the program for a fiscal year shall be the portion of the taxes appropriated to the Highway Trust Fund (other than for the Mass Transit Account) for that fiscal year that is attributable to highway users in that State during that fiscal year, reduced by a pro rata share withheld by the Secretary to fund contract authority for programs of the National Highway Traffic Safety Administration and the Federal Motor Carrier Safety Administration.

"(2) TRANSFERS UNDER PROGRAM.—

"(A) IN GENERAL.—Transfers under the program—

"(i) shall be made at the same time as deposits to the Highway Trust Fund are made by the Secretary of the Treasury; and

"(ii) shall—

"(I) be made on the basis of estimates by the Secretary, in consultation with the Secretary of the Treasury, based on the most recent data available; and

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

"(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), the excess shall be taken into account in making subsequent adjustments under subparagraph (A)(ii)(II).

"(f) APPLICATION WITH OTHER AUTHORITY.—Any contract authority under this chapter (and any obligation limitation) authorized for a State for a fiscal year for which an election by that State is in effect under subsection (b)—

"(1) shall be rescinded or canceled; and

"(2) shall not be reallocated or distributed to any other State under this chapter.

"(g) MAINTENANCE OF EFFORT.—

"(1) IN GENERAL.—Not later than 30 days after the date on which an amount is distributed to a State or State agency under the program, the Governor of the State shall certify to the Secretary that the State will maintain the effort of the State with regard to State funding for the types of projects that are funded by the amounts distributed.

"(2) AMOUNTS.—As part of the certification under paragraph (1), the Governor shall submit to the Secretary a statement that identifies the amount of funds the State plans to expend from State sources during the covered period for the types of projects that are funded by the amounts.

"(h) TREATMENT OF GENERAL REVENUES.—For purposes of this section, any general revenue funds appropriated to the Highway Trust Fund shall be transferred to a State under the program in the manner described in subsection (e)(1).".

(b) CONFORMING AMENDMENT.—The analysis for chapter 1 of title 23, United States Code, is amended by inserting after the item relating to section 170 the following:

"171. Direct Federal-aid highway program.".

SEC. 3. ALTERNATIVE FUNDING OF PUBLIC TRANSPORTATION PROGRAMS.

(a) IN GENERAL.—Chapter 53 of title 49, United States Code, is amended by adding at the end the following:

"§ 5341. Alternative funding of public transportation programs

"(a) DEFINITIONS.—In this section—

"(1) the term 'alternative funding program' means the program established under subsection (c);

"(2) the term 'covered program' means a Federal public transportation program that is funded using amounts made available from the Mass Transit Account of the Highway Trust Fund; and

"(3) the term 'Federal public transportation program' means a Federal program that provides funding for public transportation, including under—

"(A) the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Public Law 109–59; 119 Stat. 1144);

"(B) the Moving Ahead for Progress in the 21st Century Act (Public Law 112–141; 126 Stat. 405);

"(C) the Fixing America's Surface Transportation Act (Public Law 114–94; 129 Stat. 1312);

"(D) title 23; or

"(E) this chapter.

"(b) ELECTION BY STATE NOT TO PARTICIPATE.—Notwithstanding any other provision of law and in accordance with this section, a State may elect not to participate in any covered program.

"(c) PUBLIC TRANSPORTATION ALTERNATIVE FUNDING PROGRAM.—

"(1) IN GENERAL.—The Secretary shall carry out a public transportation alternative funding program in accordance with the requirements of this section under which the legislature of a State may elect, not fewer than 90 days before the beginning of a fiscal year—

"(A) to waive the right of the State to receive amounts apportioned or allocated to the State under the covered programs for the fiscal year to which the election relates; and

"(B) to receive an amount for that fiscal year that is determined in accordance with subsection (f).

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

"(A) assumes all Federal obligations relating to each covered program; and

"(B) shall fulfill those obligations using the amounts transferred to the State under subsection (f).

"(3) ELIGIBLE YEARS.—A State may make an election with respect to fiscal year 2020 and any fiscal year thereafter.

"(d) STATE RESPONSIBILITY.—

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

"(A) submit a plan to the Secretary that describes—

"(i) the purposes, projects, and uses to which amounts received under the alternative funding program will be put; and

"(ii) which programmatic requirements of the covered programs the State elects to continue;

"(B) agree to obligate or expend amounts received under the alternative funding program exclusively for projects that would be eligible for funding under the covered programs if the State was not participating in the alternative funding program;

"(C) submit to the Secretary an annual report on the use of amounts received under the alternative funding program; and

"(D) make the annual report available to the public in an easily accessible format.

"(2) NO FEDERAL LIMITATION ON USE OF FUNDS.—Except as provided in paragraph (1), the expenditure or obligation of funds received by a State under the alternative funding program shall not be subject to the requirements of—

"(A) this chapter (except for this section);

"(B) any covered program not under this chapter;

"(C) title 23; or

"(D) any other Federal law (including regulations).

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

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

"(f) TRANSFERS.—

"(1) IN GENERAL.—The amount to be transferred to a State under the alternative funding program for a fiscal year shall be the portion of the taxes transferred to the Mass Transit Account of the Highway Trust Fund under section 9503(e) of the Internal Revenue Code of 1986 for that fiscal year that is attributable to highway users in that State during that fiscal year.

"(2) TRANSFERS UNDER PROGRAM.—

"(A) IN GENERAL.—Transfers under the alternative funding program—

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

"(ii) shall—

"(I) be made on the basis of estimates by the Secretary, in consultation 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).

"(g) APPLICATION WITH OTHER AUTHORITY.—Any contract authority under a covered program (and any obligation limitation) authorized for a State for a fiscal year for which the State elects to participate in the alternative funding program shall be rescinded or canceled.

"(h) MAINTENANCE OF EFFORT.—

"(1) IN GENERAL.—Not later than 30 days after the date on which amounts are distributed to a State or State agency under the alternative funding program, the Governor of the State shall certify to the Secretary that the State will maintain the effort of the State with regard to State funding for the types of projects that are funded by the amounts distributed.

"(2) AMOUNTS.—As part of the certification under paragraph (1), the Governor shall submit to the Secretary a statement that identifies the amount of funds the State plans to expend from State sources for projects funded under the alternative funding program during the fiscal year for which the State elects to participate in the alternative funding program.

"(i) TREATMENT OF GENERAL REVENUES.—For purposes of this section, any general revenue funds appropriated to the Mass Transit Account of the Highway Trust

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

(b) CONFORMING AMENDMENT.—The analysis for chapter 53 of title 49, United States Code, is amended by inserting after the item relating to section 5340 the following:

``5341. Alternative funding of public transportation programs.''.

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