

[STAFF WORKING DRAFT]

APRIL 27, 2009

111TH CONGRESS
1ST SESSION

S. _____

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

IN THE SENATE OF THE UNITED STATES

APRIL —, 2009

Mrs. HUTCHISON (for herself, Mr. MARTINEZ, Mr. CORNYN, and Mr. KYL) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To permit a State to elect to receive the State's contributions to the Highway Trust Fund in lieu of its Federal-aid Highway program apportionment for the next 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Highway Fairness and
3 Reform Act of 2009”.

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

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

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

12 “(a) IN GENERAL.—Beginning with fiscal year 2011,
13 the Secretary shall carry out a direct Federal-aid highway
14 program in accordance with the requirements of this sec-
15 tion. Under the program, the Governor or chief executive
16 officer of a State may elect, not less than 90 days before
17 the beginning of the fiscal year, to have the State waive
18 its right to receive amounts apportioned or allocated to
19 it under the Federal-aid highway program for the fiscal
20 year to which the election relates; and to receive instead
21 the amount determined under subsection (d) for that fiscal
22 year. The election shall be made in such form and manner
23 as the Secretary may require and shall be irrevocable.

24 “(b) STATE RESPONSIBILITY.—

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

4 “(A) has an interstate maintenance pro-
5 gram and agrees to maintain the interstate in
6 accordance with that program;

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

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

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

15 “(C) agrees to obligate or expend amounts
16 received under the program exclusively for
17 projects that would be eligible for funding
18 under section 133(b) of this title if the State
19 were not participating in the program; and

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

24 “(2) SAFETY REQUIREMENTS.—The Secretary
25 may determine that requirements important for

1 transportation safety continue to apply to a State
2 that makes an election under subsection (a).

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

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

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

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

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

22 “(d) TRANSFERS.—

23 “(1) IN GENERAL.—The amount to be trans-
24 ferred to a State under the program for a fiscal year
25 shall be the portion of the taxes appropriated to the

1 Highway Trust Fund under section 9503 of the In-
2 ternal Revenue Code of 1986, other than for the
3 Mass Transit Account, for a fiscal year for which an
4 election is in effect under subsection (a) that is at-
5 tributable to highway users in that State during that
6 fiscal year, reduced by a pro rata share withheld by
7 the Secretary to fund contract authority for pro-
8 grams of the National Highway Traffic Safety Ad-
9 ministration and the Federal Motor Carrier Safety
10 Administration.

11 “(2) GENERAL FUND AMOUNTS.—For purposes
12 of paragraph (1), any amounts deposited in or cred-
13 ited to the Highway Trust Fund from the general
14 fund of the Treasury shall be treated as if they were
15 taxes appropriated to the Fund.

16 “(3) TRANSFERS.—

17 “(A) IN GENERAL.—Transfers under the
18 program—

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

22 “(ii) shall be made on the basis of es-
23 timates by the Secretary, in consultation
24 with the Secretary of the Treasury, 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 “(e) APPLICATION WITH OTHER AUTHORITY.—The
14 Secretary shall rescind or cancel any contract authority
15 under this chapter (and any obligation limitation) for a
16 State for a fiscal year for which an election by that State
17 is in effect under subsection (a).”.

18 (b) CLERICAL AMENDMENT.—The chapter analysis
19 for chapter 1 of title 23, United States Code, is amended
20 by inserting after the item relating to section 149 the fol-
21 lowing:

“150. Direct Federal-aid highway program”.

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