

116TH CONGRESS
1ST SESSION

S. 1038

To strengthen highway funding in the near term, to offer States additional financing tools, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 4, 2019

Mrs. FISCHER introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To strengthen highway funding in the near term, to offer States additional financing tools, 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 “Build USA Infrastruc-
5 ture Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) ADMINISTRATION.—The term “Administra-
9 tion” means the Federal Highway Administration.

1 (2) ADMINISTRATOR.—The term “Adminis-
2 trator” means the Administrator of the Administra-
3 tion.

4 (3) CORE INFRASTRUCTURE PROJECT.—The
5 term “core infrastructure project” means a Federal-
6 aid highway or highway (as those terms are defined
7 in section 101(a) of title 23, United States Code)
8 project of a State that is eligible for funding under
9 chapter 1 of title 23, United States Code.

10 (4) STATE.—The term “State” has the mean-
11 ing given the term in section 101(a) of title 23,
12 United States Code.

13 **SEC. 3. ADDRESSING NEAR TERM TRANSPORTATION**
14 **NEEDS.**

15 Section 105 of title 23, United States Code, is
16 amended—

17 (1) by redesignating subsection (g) as sub-
18 section (h); and

19 (2) by inserting after subsection (f) the fol-
20 lowing:

21 “(g) U.S. CUSTOMS AND BORDER PROTECTION REV-
22 ENUES.—During the 5-year period beginning on October
23 1, 2020, the first \$21,400,000,000 of revenues collected
24 by U.S. Customs and Border Protection during each fiscal
25 year shall be deposited into the Highway Trust Fund.”.

1 **SEC. 4. HIGHWAY PROJECT FLEXIBILITY FOR STATES.**

2 (a) IN GENERAL.—A State may enter into an agree-
 3 ment with the Administration, for a period of 3 years or
 4 longer, under which, during each fiscal year of the agree-
 5 ment, the State agrees—

6 (1) to opt out of receiving 60 percent or greater
 7 of the amount authorized out of the Highway Trust
 8 Fund that the State would have received for Fed-
 9 eral-aid highway activities under section 119(d) or
 10 133(b) of title 23, United States Code, for that fis-
 11 cal year, and a corresponding amount of any appli-
 12 cable obligation limitation;

13 (2) in lieu of the amount referred to in para-
 14 graph (1), to accept from the Administration an
 15 amount equal to 90 percent of that amount and a
 16 corresponding amount of any applicable obligation
 17 limitation; and

18 (3) to use the amount received from the Admin-
 19 istration under paragraph (2) to carry out core in-
 20 frastructure projects in accordance with this section.

21 (b) AMOUNT OF OPT-OUT.—

22 (1) IN GENERAL.—The amount described in
 23 subsection (a)(1) shall not include any amounts re-
 24 quired to be set aside, any penalties, or any amounts
 25 required to be suballocated to areas based on popu-
 26 lation.

1 (2) EFFECT ON CERTAIN PROVISIONS.—If a
 2 State enters into an agreement under subsection (a),
 3 the calculation under section 133(d)(1) of title 23,
 4 United States Code, shall be determined as if the
 5 State had not entered into the agreement.

6 (c) TREATMENT OF FUNDS.—

7 (1) IN GENERAL.—Except as otherwise pro-
 8 vided in this Act, amounts received by a State under
 9 an agreement under subsection (a) shall be available
 10 for obligation and administered as if apportioned
 11 under chapter 1 of title 23, United States Code.

12 (2) DISADVANTAGED BUSINESS ENTER-
 13 PRISES.—Section 1101(b) of the FAST Act (23
 14 U.S.C. 101 note; Public Law 114–94) shall apply to
 15 amounts received by a State under an agreement
 16 under subsection (a) as if those amounts were made
 17 available under title I of that Act.

18 (d) STATE DETERMINATION OF COMPLIANCE.—Not-
 19 withstanding any other provision of law, in carrying out
 20 a core infrastructure project in accordance with this sub-
 21 section, a State—

22 (1) shall determine whether the State is in com-
 23 pliance with all Federal requirements of—

24 (A) environmental approvals relating to the
 25 project;

1 (B) environmental permits relating to the
2 project;

3 (C) section 313 of title 23, United States
4 Code;

5 (D) the development and construction of
6 the project, including preliminary design, right-
7 of-way acquisition, construction engineering,
8 and final acceptance of the project;

9 (E) preapproval for preventative mainte-
10 nance projects and procedures;

11 (F) project agreements and modifications
12 to project agreements; and

13 (G) consultant procurement services relat-
14 ing to the project; and

15 (2) shall assume responsibility of and oversight
16 duties over compliance with all applicable require-
17 ments.

18 (e) JUDICIAL REVIEW.—The determination of a
19 State under subsection (d)(1) shall not be subject to judi-
20 cial review.

21 (f) RULEMAKING.—The Administrator shall issue
22 such regulations as may be necessary to carry out this
23 section.

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