

112TH CONGRESS  
1ST SESSION

# S. 1230

To secure public investments in transportation infrastructure.

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IN THE SENATE OF THE UNITED STATES

JUNE 16, 2011

Mr. DURBIN introduced the following bill; which was read twice and referred  
to the Committee on Commerce, Science, and Transportation

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## A BILL

To secure public investments in transportation infrastructure.

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 “Protecting Taxpayers  
5        in Transportation Asset Transfers Act”.

6        **SEC. 2. DEFINITIONS.**

7        In this Act:

8                (1) **ASSET TRANSACTION.**—The term “asset  
9        transaction” means—

10                (A) a concession agreement for a public  
11        transportation asset; or

1 (B) a contract for the sale or lease of a  
 2 public transportation asset between the State or  
 3 local government with jurisdiction over the pub-  
 4 lic transportation asset and a private individual  
 5 or entity.

6 (2) CONCESSION AGREEMENT.—

7 (A) IN GENERAL.—The term “concession  
 8 agreement” means an agreement entered into  
 9 by a private individual or entity and a State or  
 10 local government with jurisdiction over a public  
 11 transportation asset to convey to the private in-  
 12 dividual or entity the right to manage, operate,  
 13 and maintain the public transportation asset for  
 14 a specific period of time in exchange for the au-  
 15 thorization to impose and collect a toll or other  
 16 user fee from a person for each use of the pub-  
 17 lic transportation asset during that period.

18 (B) EXCLUSION.—The term “concession  
 19 agreement” does not include an agreement en-  
 20 tered into by a State or local government and  
 21 a private individual or entity for the construc-  
 22 tion of any new public transportation asset.

23 (3) PUBLIC TRANSPORTATION ASSET.—

24 (A) IN GENERAL.—The term “public  
 25 transportation asset” means a transportation

1 facility of any kind that was or is constructed,  
2 maintained, or upgraded before, on, or after the  
3 date of enactment of this Act using Federal  
4 funds—

5 (i)(I) the fair market value of which is  
6 more than \$500,000,000, as determined by  
7 the Secretary; and

8 (II) that has received any Federal  
9 funding, as of the date on which the deter-  
10 mination is made;

11 (ii) the fair market value of which is  
12 less than or equal to \$500,000,000, as de-  
13 termined by the Secretary; and

14 (I) that has received \$25,000,000 or  
15 more in Federal funding, as of the date on  
16 which the determination is made; or

17 (iii) in which a significant national  
18 public interest (such as interstate com-  
19 merce, homeland security, public health, or  
20 the environment) is at stake, as deter-  
21 mined by the Secretary.

22 (B) INCLUSIONS.—The term “public trans-  
23 portation asset” includes a transportation facil-  
24 ity described in subparagraph (A) that is—

1 (i) a Federal-aid highway (as defined  
2 in section 101 of title 23, United States  
3 Code);

4 (ii) a highway or mass transit project  
5 constructed using amounts made available  
6 from the Highway Account or Mass Tran-  
7 sit Account, respectively, of the Highway  
8 Trust Fund;

9 (iii) an air navigation facility (as de-  
10 fined in section 40102(a) of title 49,  
11 United States Code); or

12 (iv) a train station or multimodal sta-  
13 tion that receives a Federal grant, includ-  
14 ing any grant authorized under the Pas-  
15 senger Rail Investment and Improvement  
16 Act of 2008 (Public Law 110–432; 122  
17 Stat. 4907) or an amendment made by  
18 that Act.

19 (4) SECRETARY.—The term “Secretary” means  
20 the Secretary of Transportation.

21 **SEC. 3. PROGRAM TO SECURE PUBLIC INVESTMENTS IN**  
22 **TRANSPORTATION INFRASTRUCTURE.**

23 (a) ESTABLISHMENT.—Not later than 180 days after  
24 the date of enactment of this Act, the Secretary shall es-

1 tablish a program under which a Federal lien shall be at-  
2 tached to each public transportation asset.

3 (b) PROHIBITION ON SALES AND LEASES.—

4 (1) IN GENERAL.—A public transportation  
5 asset to which a lien is attached under subsection  
6 (a) may not be the subject of any asset transaction  
7 unless—

8 (A) the lien is released in accordance with  
9 paragraph (2);

10 (B)(i) the private individual or entity seek-  
11 ing the asset transaction enters into an agree-  
12 ment with the Secretary described in paragraph  
13 (3)(A)(i); and

14 (ii) the State or local government or other  
15 public sponsor seeking the asset transaction en-  
16 ters into an agreement with the Secretary de-  
17 scribed in paragraph (3)(A)(ii);

18 (C) the Secretary publishes a disclosure in  
19 accordance with paragraph (4); and

20 (D) the State or local government seeking  
21 the asset transaction provides for public notice  
22 and an opportunity to comment on the proposed  
23 asset transaction.

24 (2) RELEASE OF LIENS.—

1 (A) IN GENERAL.—A lien on a public  
2 transportation asset described in paragraph (1)  
3 may be released only if—

4 (i) the State or local government or  
5 other public sponsor seeking the asset  
6 transaction for the public transportation  
7 asset pays to the Secretary an amount de-  
8 termined by the Secretary under subpara-  
9 graph (B); and

10 (ii) the Secretary certifies that the re-  
11 quired agreements described in paragraph  
12 (3) have been signed, and the terms of the  
13 agreements incorporated into the terms of  
14 the asset transaction, for the public trans-  
15 portation asset.

16 (B) DETERMINATION OF REPAYMENT  
17 AMOUNT.—The Secretary shall determine the  
18 amount that is required to be paid for the re-  
19 lease of a Federal lien on a public transpor-  
20 tation asset under this paragraph, taking into  
21 account, at a minimum—

22 (i) the total amount of Federal funds  
23 that have been expended to construct,  
24 maintain, or upgrade the public transpor-  
25 tation asset;

1 (ii) the amount of Federal funding re-  
2 ceived by a State or local government  
3 based on inclusion of the public transpor-  
4 tation asset in calculations using Federal  
5 funding formulas or for Federal block  
6 grants;

7 (iii) the reasonable depreciation of the  
8 public transportation asset, including the  
9 amount of Federal funds described in  
10 clause (i) that may be offset by that depre-  
11 ciation; and

12 (iv) the loss of Federal tax revenue  
13 from bonds relating to, and the tax con-  
14 sequences of depreciation of, the public  
15 transportation asset.

16 (3) AGREEMENTS.—

17 (A) IN GENERAL.—As a condition of any  
18 new or renewed asset transaction for a public  
19 transportation asset—

20 (i) the private individual or entity  
21 seeking the asset transaction shall enter  
22 into an agreement with the Secretary,  
23 which shall be incorporated into the terms  
24 of the asset transaction, under which the  
25 private individual or entity agrees—

1 (I) to disclose and eliminate any  
2 conflict of interest involving any party  
3 to the agreement;

4 (II)(aa) to adequately maintain  
5 the condition and performance of the  
6 public transportation asset during the  
7 term of the asset transaction; and

8 (bb) on the end of the term of  
9 the asset transaction, to return the  
10 public transportation asset to the ap-  
11 plicable State or local government in a  
12 state of good repair;

13 (III) to disclose an estimated  
14 amount of tax benefits and financing  
15 transactions over the life of the lease  
16 resulting from the lease or sale of the  
17 public transportation asset;

18 (IV) to disclose anticipated  
19 changes in the workforce and wages,  
20 benefits, or rules over the life of the  
21 lease and an estimate of the amount  
22 of savings from those changes; and

23 (V) to provide an estimate of the  
24 revenue the transportation asset will



1 produce for the private entity during  
2 the lease or sale period; and

3 (ii) the State or local government or  
4 other public sponsor seeking the asset  
5 transaction for the public transportation  
6 asset shall enter into an agreement with  
7 the Secretary, which shall be incorporated  
8 into the terms of the asset transaction,  
9 under which the State or local government  
10 or other public sponsor agrees—

11 (I) to pay to the Secretary the  
12 amount determined by the Secretary  
13 under paragraph (2)(B);

14 (II) to conduct an assessment of  
15 whether, and provide justification  
16 that, the asset transaction with the  
17 private entity would represent a better  
18 public and financial benefit than a  
19 similar transaction using public fund-  
20 ing or with a public (as opposed to  
21 private) entity, including an assess-  
22 ment of—

23 (aa) the loss of toll revenues  
24 and other user fees relating to

1 the public transportation asset;  
2 and

3 (bb) any impacts on other  
4 public transportation assets in  
5 the vicinity of the public trans-  
6 portation asset covered by the  
7 asset transaction;

8 (III) that, if the private indi-  
9 vidual or entity enters into bank-  
10 ruptcy, becomes insolvent, or fails to  
11 comply with all terms and conditions  
12 of the asset transaction—

13 (aa) the asset transaction  
14 shall immediately terminate; and

15 (bb) the interest in the pub-  
16 lic transportation asset conveyed  
17 by the asset transaction will im-  
18 mediately revert to the public  
19 sponsor;

20 (IV) to provide an estimate of all  
21 increased tolls and other user fees  
22 that may be charged to persons using  
23 the public transportation asset during  
24 the term of the asset transaction;

1 (V) to disclose any plans the  
2 State or local government seeking the  
3 asset transaction has for up-front  
4 payments or concessions from the pri-  
5 vate individual or entity seeking the  
6 asset transaction;

7 (VI) that the Federal Govern-  
8 ment and the applicable State and  
9 local governments will retain respec-  
10 tive authority and control over deci-  
11 sions regarding transportation plan-  
12 ning and management; and

13 (VII) to prominently post or dis-  
14 play the agreement on the website of  
15 the local government or public spon-  
16 sor.

17 (B) TERM.—An agreement under this  
18 paragraph shall not exceed a reasonable term,  
19 as determined by the Secretary, in consultation  
20 with the relevant State or local government.

21 (4) PUBLICATION OF DISCLOSURE.—Not later  
22 than 90 days before the date on which an asset  
23 transaction covering a public transportation asset  
24 takes effect, the Secretary shall publish in the Fed-  
25 eral Register a notice that contains—

1 (A) a copy of all agreements relating to the  
2 asset transaction between the Secretary and the  
3 public and private sponsors involved;

4 (B) a description of the total amount of  
5 Federal funds that have been expended as of  
6 the date of publication of the notice to con-  
7 struct, maintain, or upgrade the public trans-  
8 portation asset;

9 (C) the determination of the repayment  
10 amount under paragraph (2)(B) for the public  
11 transportation asset;

12 (D) the amount of Federal funding re-  
13 ceived by a State or local government based on  
14 inclusion of the public transportation asset in  
15 calculations using Federal funding formulas or  
16 for Federal block grants; and

17 (E) a certification that the asset trans-  
18 action will not adversely impact the national  
19 public interest of the United States (including  
20 the interstate commerce, homeland security,  
21 public health, and environment of the United  
22 States).

23 (5) RENEWAL OF ASSET TRANSACTION.—An  
24 asset transaction that expires or terminates may be  
25 renewed only if—

1 (A) the Secretary—

2 (i) calculates a new repayment  
3 amount under paragraph (2)(B) required  
4 for renewal, as the Secretary determines to  
5 be appropriate;

6 (ii) takes into consideration the im-  
7 pact of a renewed agreement on nearby  
8 public transportation assets; and

9 (iii) publishes a new disclosure for the  
10 renewed agreement in accordance with  
11 paragraph (4); and

12 (B) the State or local government seeking  
13 to renew the asset transaction—

14 (i) provides for public notice and an  
15 opportunity to comment on the proposed  
16 renewal;

17 (ii) pays to the Secretary the new  
18 amount calculated by the Secretary pursu-  
19 ant to subparagraph (A)(i); and

20 (iii) enters into a new agreement in  
21 accordance with paragraph (3) for the re-  
22 newal.

23 (c) AMTRAK.—

24 (1) IN GENERAL.—Subject to paragraph (2),  
25 the Secretary may permit a private individual or en-

1       tity to enter into an asset transaction covering all or  
2       any portion of the facilities and equipment of the  
3       National Railroad Passenger Corporation (referred  
4       to in this subsection as “Amtrak”).

5               (2) CONDITIONS.—A private individual or enti-  
6       ty that seeks to enter into an asset transaction de-  
7       scribed in paragraph (1) shall agree—

8               (A) to enter into an agreement described  
9       in subsection (b)(3) with the Secretary covering  
10      the asset transaction; and

11              (B) to pay to the Secretary an amount  
12      equal to the amount of Federal funds provided  
13      for Amtrak during the period of fiscal year  
14      1971 through the fiscal year in which an agree-  
15      ment described in subsection (b)(3) covering the  
16      asset transaction is entered into, as adjusted  
17      by, as determined by the Secretary—

18              (i) the reasonable depreciation of the  
19      portion of Amtrak facilities and equipment  
20      covered by the agreement, including that  
21      amount of Federal funds provided for Am-  
22      trak that may be offset by that deprecia-  
23      tion;

24              (ii) the amount of Federal funding re-  
25      ceived by a State or local government to

1 upgrade any capital facilities owned or op-  
2 erated by Amtrak to facilitate passenger  
3 rail service; and

4 (iii) the loss of Federal tax revenue  
5 from bonds, Federal financing, or any tax  
6 advantages granted to Amtrak since fiscal  
7 year 1971, including financing and bond-  
8 ing covered by or provided under the Tax-  
9 payer Relief Act of 1997 (Public Law 105-  
10 34; 111 Stat. 788) or an amendment made  
11 by that Act.

12 (3) TERM, DISCLOSURE, AND RENEWAL.—Para-  
13 graphs (3)(B), (4), and (5) of subsection (b) shall  
14 apply to an asset transaction entered into under this  
15 subsection.

16 (d) USE OF FUNDS BY SECRETARY.—Funds received  
17 by the Secretary as a payment under paragraph (2)(A)(i)  
18 or (5)(B)(ii) of subsection (b) or subsection (c)(2)(B) shall  
19 be available to and used by the Secretary, without further  
20 appropriation and to remain available until expended, for  
21 transportation projects and activities in the same trans-  
22 portation mode as the mode of the public transportation  
23 asset for which the payment was received.

24 (e) REGULATIONS.—Not later than 180 days after  
25 the date of enactment of this Act, the Secretary shall pro-

1 mulgate such regulations as are necessary to implement  
2 this Act.

3 (f) REPORT TO CONGRESS.—Not later than 180 days  
4 after the date of enactment of this Act, and annually  
5 thereafter, the Secretary shall submit to Congress and  
6 publish in the Federal Register a report that describes  
7 each public transportation asset that is the subject of an  
8 asset transaction during the year covered by the report,  
9 including the total amount of Federal funds that were re-  
10 ceived by a State or local government to construct, main-  
11 tain, or upgrade the public transportation asset as of the  
12 date of submission of the report.

13 (g) AUTHORIZATION OF APPROPRIATIONS.—There  
14 are authorized to be appropriated to carry out this Act  
15 such sums as are necessary.

16 **SEC. 4. BUDGETARY EFFECTS.**

17 The budgetary effects of this Act, for the purpose of  
18 complying with the Statutory Pay-As-You-Go Act of 2010,  
19 shall be determined by reference to the latest statement  
20 titled “Budgetary Effects of PAYGO Legislation” for this  
21 Act, submitted for printing in the Congressional Record  
22 by the Chairman of the Senate Budget Committee, pro-  
23 vided that such statement has been submitted prior to the  
24 vote on passage.

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