

112TH CONGRESS  
2D SESSION

# S. 3191

To improve provisions of title 23, United States Code relating to the use  
of HOV facilities.

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IN THE SENATE OF THE UNITED STATES

MAY 16, 2012

Mr. BROWN of Ohio (for himself and Mr. ALEXANDER) 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 improve provisions of title 23, United States Code  
relating to the use of HOV facilities.

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. HOV FACILITIES.**

4       (a) IN GENERAL.—Section 166 of title 23, United  
5       States Code, is amended to read as follows:

6       **“§ 166. HOV facilities**

7       “(a) DEFINITIONS.—In this section, the following  
8       definitions apply:

1           “(1) ALTERNATIVE FUEL VEHICLE.—The term  
2           ‘alternative fuel vehicle’ means a dedicated vehicle  
3           that is operating solely on—

4                   “(A) methanol, denatured ethanol, or other  
5                   alcohols;

6                   “(B) a mixture containing at least 85 per-  
7                   cent of methanol, denatured ethanol, and other  
8                   alcohols by volume with gasoline or other fuels;

9                   “(C) natural gas;

10                  “(D) liquefied petroleum gas;

11                  “(E) hydrogen;

12                  “(F) fuels (except alcohol) derived from bi-  
13                  ological materials;

14                  “(G) electricity (including electricity from  
15                  solar energy); or

16                  “(H) any other fuel that the Secretary pre-  
17                  scribes by regulation that is not substantially  
18                  petroleum and that would yield substantial en-  
19                  ergy security and environmental benefits, in-  
20                  cluding fuels regulated under section 490 of  
21                  title 10, Code of Federal Regulations (or suc-  
22                  cessor regulations).

23           “(2) HOV FACILITY.—The term ‘HOV facility’  
24           means a high occupancy vehicle facility.

1 “(3) PUBLIC TRANSPORTATION VEHICLE.—The  
 2 term ‘public transportation vehicle’ means a vehicle  
 3 that—

4 “(A) provides designated public transpor-  
 5 tation (as defined in section 221 of the Ameri-  
 6 cans with Disabilities Act of 1990 (42 U.S.C.  
 7 12141)) or provides public school transpor-  
 8 tation (to and from public or private primary,  
 9 secondary, or tertiary schools); and

10 “(B)(i) is owned or operated by a public  
 11 entity;

12 “(ii) is operated under a contract with a  
 13 public entity; or

14 “(iii) is operated pursuant to a license by  
 15 the Secretary or a State agency to provide  
 16 motorbus or school vehicle transportation serv-  
 17 ices to the public.

18 “(4) STATE AGENCY.—

19 “(A) IN GENERAL.—The term ‘State agen-  
 20 cy’, as used with respect to a HOV facility,  
 21 means an agency of a State or local government  
 22 having jurisdiction over the operation of the fa-  
 23 cility.

24 “(B) INCLUSION.—The term ‘State agen-  
 25 cy’ includes a State transportation department.

1 “(b) STATE REQUIREMENTS.—

2 “(1) AUTHORITY OF STATE AGENCIES.—A  
3 State agency that has jurisdiction over the operation  
4 of a HOV facility shall establish the occupancy re-  
5 quirements of vehicles operating on the facility.

6 “(2) OCCUPANCY REQUIREMENT.—Except as  
7 otherwise provided by this section, no fewer than 2  
8 occupants per vehicle may be required for use of a  
9 HOV facility.

10 “(c) EXCEPTIONS.—

11 “(1) IN GENERAL.—Notwithstanding the occu-  
12 pancy requirement of subsection (b)(2), the excep-  
13 tions in paragraphs (2) through (5) shall apply with  
14 respect to a State agency operating a HOV facility.

15 “(2) MOTORCYCLES AND BICYCLES.—

16 “(A) IN GENERAL.—Subject to subpara-  
17 graph (B), the State agency shall allow motor-  
18 cycles and bicycles to use the HOV facility.

19 “(B) SAFETY EXCEPTION.—

20 “(i) IN GENERAL.—A State agency  
21 may restrict use of the HOV facility by  
22 motorcycles or bicycles (or both) if the  
23 agency certifies to the Secretary that such  
24 use would create a safety hazard and the  
25 Secretary accepts the certification.

1                   “(ii) ACCEPTANCE OF CERTIFI-  
2                   CATION.—The Secretary may accept a cer-  
3                   tification under this subparagraph only  
4                   after the Secretary publishes notice of the  
5                   certification in the Federal Register and  
6                   provides an opportunity for public com-  
7                   ment.

8                   “(3) PUBLIC TRANSPORTATION VEHICLES.—  
9                   The State agency may allow public transportation  
10                  vehicles to use the HOV facility if the agency estab-  
11                  lishes—

12                   “(A) requirements for clearly identifying  
13                   the vehicles; and

14                   “(B) procedures for enforcing the restric-  
15                   tions on the use of the facility by the vehicles.

16                   “(4) HIGH OCCUPANCY TOLL VEHICLES.—The  
17                   State agency may allow vehicles not otherwise ex-  
18                   empt pursuant to this subsection to use the HOV fa-  
19                   cility if the operators of the vehicles pay a toll  
20                   charged by the agency for use of the facility and the  
21                   agency—

22                   “(A) establishes a program that addresses  
23                   how motorists can enroll and participate in the  
24                   toll program;

1 “(B) develops, manages, and maintains a  
 2 system that will automatically collect the toll;  
 3 and

4 “(C) establishes policies and procedures—  
 5 “(i) to manage the demand to use the  
 6 facility by varying the toll amount that is  
 7 charged; and

8 “(ii) to enforce violations of use of the  
 9 facility.

10 “(5) ALTERNATIVE FUEL VEHICLES AND NEW  
 11 QUALIFIED PLUG-IN ELECTRIC DRIVE MOTOR VEHI-  
 12 CLES.—

13 “(A) USE OF HOV FACILITIES.—For a pe-  
 14 riod beginning not later than 1 year after the  
 15 date of enactment of this section and ending on  
 16 September 30, 2017, the State agency—

17 “(i) may allow alternative fuel vehicles  
 18 and new qualified plug-in electric drive  
 19 motor vehicles (as defined in section  
 20 30D(d)(1) of the Internal Revenue Code of  
 21 1986), to use HOV facilities in the State;  
 22 and

23 “(ii) shall establish procedures for use  
 24 in enforcing the restrictions on that use of  
 25 HOV facilities by those vehicles.

1 “(B) EXISTING PROGRAMS AND PROCE-  
 2 DURES.—The State agency shall—

3 “(i) not later than 1 year after the  
 4 date of enactment of this section, develop  
 5 and publish in the Federal Register a plan  
 6 for use in—

7 “(I) revising the HOV facility  
 8 programs and procedures of the State  
 9 agency to ensure that those programs  
 10 and procedures are in compliance with  
 11 this section; and

12 “(II) notifying the public of any  
 13 upcoming changes in vehicle eligibility  
 14 for HOV facility usage; and

15 “(ii) not later than 3 years after the  
 16 date of enactment of this section, update  
 17 HOV facility programs and procedures in  
 18 accordance with the plan described in  
 19 clause (i).

20 “(d) REQUIREMENTS APPLICABLE TO TOLLS.—

21 “(1) IN GENERAL.—Notwithstanding sections  
 22 129 and 301, and except as provided in paragraph  
 23 (2), tolls may be charged under subsection (c)(4).

24 “(2) EXCESS TOLL REVENUES.—If a State  
 25 agency makes a certification under section 129(a)(3)

1 with respect to toll revenues collected under sub-  
2 section (c)(4), the State, in the use of toll revenues  
3 under subsection (c)(4), shall give priority consider-  
4 ation to projects for developing alternatives to single  
5 occupancy vehicle travel and projects for improving  
6 highway safety.

7 “(e) HOV FACILITY MANAGEMENT, OPERATION,  
8 MONITORING, AND ENFORCEMENT.—

9 “(1) IN GENERAL.—A State agency that allows  
10 vehicles to use a HOV facility under paragraph (4)  
11 or (5) of subsection (c) shall submit to the Secretary  
12 a report demonstrating that the facility is not al-  
13 ready degraded, and that the presence of the vehi-  
14 cles will not cause the facility to become degraded,  
15 and certify that the agency will carry out the fol-  
16 lowing responsibilities with respect to the facility:

17 “(A) Establishing, managing, and sup-  
18 porting a performance monitoring, evaluation,  
19 and reporting program for the HOV facility  
20 that provides for continuous monitoring, assess-  
21 ment, and reporting on the impacts that the ve-  
22 hicles may have on the operation of the facility  
23 and adjacent highways and submitting to the  
24 Secretary annual reports of those impacts.

1           “(B) Establishing, managing, and sup-  
 2           porting an enforcement program that ensures  
 3           that the HOV facility is being operated in ac-  
 4           cordance with this section.

5           “(C) Limiting or discontinuing the use of  
 6           the HOV facility by the vehicles, whenever the  
 7           operation of the facility is degraded, that re-  
 8           quires such a limitation or discontinuation of  
 9           use to apply first to vehicles using the HOV fa-  
 10          cility under subsection (c)(4) before applying to  
 11          vehicles using the HOV facility under sub-  
 12          section (c)(5).

13          “(2) MAINTENANCE OF OPERATING PERFORM-  
 14          ANCE.—A facility that has become degraded shall be  
 15          brought back into compliance with the minimum av-  
 16          erage operating speed performance standard by not  
 17          later than 180 days after the date on which the deg-  
 18          radation is identified through changes to operation,  
 19          including the following:

20               “(A) Increase the occupancy requirement  
 21               for HOVs.

22               “(B) Increase the toll charged for vehicles  
 23               allowed under subsection (b) to reduce demand.

1           “(C) Charge tolls to any class of vehicle al-  
2           lowed under subsection (b) that is not already  
3           subject to a toll.

4           “(D) Limit or discontinue allowing vehicles  
5           under subsection (b).

6           “(E) Increase the available capacity of the  
7           HOV facility.

8           “(3) COMPLIANCE.—If the State fails to bring  
9           a facility into compliance under paragraph (2), the  
10          Secretary shall subject the State to appropriate pro-  
11          gram sanctions under section 1.36 of title 23, Code  
12          of Federal Regulations (or successor regulations),  
13          until the performance is no longer degraded.

14          “(4) DEGRADED FACILITY.—

15               “(A) DEFINITION OF MINIMUM AVERAGE  
16               OPERATING SPEED.—In this paragraph, the  
17               term ‘minimum average operating speed’ means  
18               less than 65 percent of the HOV facility rated  
19               speed limit.

20               “(B) STANDARD FOR DETERMINING DE-  
21               GRADED FACILITY.—For purposes of paragraph  
22               (1), the operation of a HOV facility shall be  
23               considered to be degraded if vehicles operating  
24               on the HOV facility are failing to maintain a  
25               minimum average operating speed 65 percent of

1           the time over a consecutive 180-day period dur-  
2           ing morning or evening weekday peak hour pe-  
3           riods (or both).”.

4       (b) SENSE OF CONGRESS.—It is the sense of Con-  
5   gress that the Secretary and the States should provide ad-  
6   ditional incentives (including the use of high occupancy  
7   vehicle lanes on State highways and routes on the Inter-  
8   state System) for the purchase and use of advanced tech-  
9   nology and dedicated alternative fuel vehicles, which have  
10   been proven to minimize air emissions and decrease con-  
11   sumption of fossil fuels.

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