AMENDMENT NO._________ Calendar No._____

Purpose: To establish a direct federal-aid highway program and alternative funding of public transportation programs.


S. 1813

AMENDMENT NO. 1598

By Coburn

Re

S. 1813

AMENDMENT intended to be proposed by Mr. Coburn (for himself and Mr. McCain, Mr. Burr, Mr. Lee, Mr. Portman, Mr. Isakson, and Mr. Coats)

Viz:

At the appropriate place, insert the following:

SEC. __001. DIRECT FEDERAL-AID HIGHWAY PROGRAM.

(a) In general.—Chapter 1 of title 23, United States Code (as amended by section 1115(a)), is amended by adding at the end the following:

“§ 168. Direct Federal-aid highway program

“(a) Election by State Not To Participate.—

Notwithstanding any other provision of law, a State may elect not to participate in any Federal program relating to highways, including a Federal highway program under
the SAFETEA–LU (Public Law 109–59; 119 Stat. 1144), this title, or title 49.

"(b) Direct Federal-Aid Highway Program.—

"(1) In general.—Beginning in fiscal year 2011, the Secretary shall carry out a direct Federal-aid highway program in accordance with this section under which the legislature of a State may elect, not later 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 Federal-aid highway program 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 shall—

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

"(B) fulfill those obligations using the amounts transferred to the State under subsection (e).
“(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 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 used; and

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

“(C) agree to obligate or expend amounts received under the direct Federal-aid highway 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 to report annually to the Secretary on the use of amounts received under the direct Federal-aid highway program and 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 direct Federal-aid highway program
shall not be subject to any Federal regulation under
this title (except for this section), title 49, or any
other Federal law.

“(3) ELECTION IRREVOCABLE.—An election
under subsection (b) shall be irrevocable for the ap-
licable fiscal year.

“(d) EFFECT ON PREEXISTING COMMITMENTS.—
The making of 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 for any fiscal year for which an election under
subsection (b) is not in effect.

“(e) TRANSFERS.—

“(1) IN GENERAL.—The amount to be trans-
ferred to a State under the direct Federal-aid high-
way 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 Fed-
eral Motor Carrier Safety Administration.

“(2) TRANSFERS UNDER PROGRAM.—

“(A) IN GENERAL.—Transfers under the
program shall be made—

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

“(ii) on the basis of estimates by the
Secretary, in consultation with the Sec-
retary of the Treasury, based on the most
recent data available, with proper adjust-
ments made 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) to any transfer
may not exceed 5 percent of the trans-
ferred amount to which the adjustment re-
lates.

“(ii) Subsequent Adjustments.—If
the adjustment required under subpara-
graph (A)(ii) exceeds that percentage, the
excess shall be taken into account in mak-
ing subsequent adjustments under sub-
paragraph (A)(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 sub-
section (b)—

“(1) shall be rescinded or canceled; and

“(2) shall not be reallocated or distributed to
any other State under the Federal-aid highway pro-
gram.

“(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 this section, the Gov-
ernor 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.
“(2) AMOUNTS.—As part of the certification, the Governor shall submit to the Secretary a description of 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 (as amended by section 1115(b)), is amended by adding at the end the following:

“168. Direct Federal-aid highway program”.

SEC. __002. 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) ALTERNATIVE FUNDING PROGRAM.—The term ‘alternative funding program’ means the program established under subsection (e).

“(2) COVERED PROGRAMS.—The term ‘covered programs’ means the programs authorized under—

“(A) sections 5305, 5307, 5308, 5309, 5310, 5311, 5316, 5317, 5320, 5335, 5339, and 5340; and


“(b) ELECTION BY STATE NOT TO PARTICIPATE.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, a State may elect not to participate in all Federal programs relating to public transportation funded under the Mass Transit Account of the Highway Trust Fund, including the Federal public transportation programs under the SAFETEA–LU (Public Law 109–59; 119 Stat. 1144), title 23, or this title.

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

“(A) assume all Federal obligations relating to each program that is the subject of the election; and
“(B) fulfill those obligations using the amounts transferred to the State under subsection (e).

“(c) PUBLIC TRANSPORTATION PROGRAM.—

“(1) PROGRAM ESTABLISHED.—Beginning in fiscal year 2011, the Secretary shall carry out an alternative funding program under which the legislature of a State may elect, not later 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 (e).

“(2) PROGRAM REQUIREMENTS.—

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

“(i) submit a plan to the Secretary describing—

“(I) the purposes, projects, and uses to which amounts received under
the alternative funding program will be used; and

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

"(ii) 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; and

"(iii) submit to the Secretary an annual report on the use of amounts received under the alternative funding program, and to make the report available to the public in an easily accessible format.

"(B) No federal limitation on use of funds.—Except as provided in subparagraph (A), the expenditure or obligation of funds received by a State under the alternative funding program shall not be subject to the provisions of this title (except for this section), title 23, or any other Federal law.
“(3) ELECTION IRREVOCABLE.—An election under paragraph (1) shall be irrevocable for the applicable fiscal year.

“(d) EFFECT ON PREEXISTING COMMITMENTS.—Participation in the alternative funding program 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 for any fiscal year for which the State elects not to participate in the alternative funding program.

“(e) 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, for that fiscal year, that is attributable to highway users in that State during that fiscal year.

“(2) TRANSFERS.—

“(A) IN GENERAL.—Transfers under the program shall be made—

“(i) 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) on the basis of estimates by the Secretary, in consultation with the Secretary of the Treasury, based on the most recent data available, with proper adjustments made 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) to any transfer may not exceed 5 percent of the transferred amount to which the adjustment relates.

"(ii) SUBSEQUENT ADJUSTMENTS.—If the adjustment required under subparagraph (A)(ii) exceeds that percentage, the excess shall be taken into account in making subsequent adjustments under subparagraph (A)(ii).

"(f) CONTRACT AUTHORITY.—There shall be rescinded or canceled any contract authority under this chapter (and any obligation limitation) authorized for a
State for a fiscal year for which the State elects to participate in the alternative funding program.

"(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 this section, 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.

"(2) AMOUNTS.—The certification under paragraph (1) shall include a description of 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.

"(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).”.

(b) CONFORMING AMENDMENT.—The analysis for chapter 53 of title 49, United States Code, is amended by adding at the end the following:

"5341. Alternative funding of public transportation programs".