

Tom Coburn
S.L.C.
M.M.
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4:00pm
2/14/12

AMENDMENT NO. _____ Calendar No. _____

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

IN THE SENATE OF THE UNITED STATES—112th Cong., 2d Sess.

S. 1813

T	AMENDMENT N^o 1598	afety
	By <u>Coburn</u>	
Re	To: _____	and
	<u>s. 1813</u>	
	<u>13</u>	
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Viz: AMENDMENT intended to be proposed by MR. COBURN (FOR HIMSELF AND MR. McCAIN, MR. BURR, MR. LEE, MR. PORTMAN, MR. ISAKSON, AND MR. COATS)

- 1 At the appropriate place, insert the following:
- 2 **SEC. ___001. DIRECT FEDERAL-AID HIGHWAY PROGRAM.**
- 3 (a) IN GENERAL.—Chapter 1 of title 23, United
- 4 States Code (as amended by section 1115(a)), is amended
- 5 by adding at the end the following:
- 6 **“§ 168. Direct Federal-aid highway program**
- 7 “(a) ELECTION BY STATE NOT TO PARTICIPATE.—
- 8 Notwithstanding any other provision of law, a State may
- 9 elect not to participate in any Federal program relating
- 10 to highways, including a Federal highway program under

1 the SAFETEA-LU (Public Law 109–59; 119 Stat.
2 1144), this title, or title 49.

3 “(b) DIRECT FEDERAL-AID HIGHWAY PROGRAM.—

4 “(1) IN GENERAL.—Beginning in fiscal year
5 2011, the Secretary shall carry out a direct Federal-
6 aid highway program in accordance with this section
7 under which the legislature of a State may elect, not
8 later than 90 days before the beginning of a fiscal
9 year—

10 “(A) to waive the right of the State to re-
11 ceive amounts apportioned or allocated to the
12 State under the Federal-aid highway program
13 for the fiscal year to which the election relates;
14 and

15 “(B) to receive an amount for that fiscal
16 year that is determined in accordance with sub-
17 section (e) for that fiscal year.

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

20 “(A) assume all Federal obligations relat-
21 ing to each program that is the subject of the
22 election; and

23 “(B) fulfill those obligations using the
24 amounts transferred to the State under sub-
25 section (e).

1 “(c) STATE RESPONSIBILITY.—

2 “(1) IN GENERAL.—The Governor of a State
3 making an election under subsection (b) shall—

4 “(A) agree to maintain the Interstate Sys-
5 tem in accordance with the Interstate System
6 program;

7 “(B) submit 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 used; and

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

15 “(C) agree to obligate or expend amounts
16 received under the direct Federal-aid highway
17 program exclusively for projects that would be
18 eligible for funding under section 133(b) if the
19 State was not participating in the program; and

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

1 “(2) NO FEDERAL LIMITATION ON USE OF
2 FUNDS.—Except as provided in paragraph (1), the
3 expenditure or obligation of funds received by a
4 State under the direct Federal-aid highway program
5 shall not be subject to any Federal regulation under
6 this title (except for this section), title 49, or any
7 other Federal law.

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

11 “(d) EFFECT ON PREEXISTING COMMITMENTS.—
12 The making of an election under subsection (b) shall not
13 affect any responsibility or commitment of the State under
14 this title for any fiscal year with respect to—

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

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

20 “(e) TRANSFERS.—

21 “(1) IN GENERAL.—The amount to be trans-
22 ferred to a State under the direct Federal-aid high-
23 way program for a fiscal year shall be the portion
24 of the taxes appropriated to the Highway Trust
25 Fund (other than for the Mass Transit Account) for

1 that fiscal year that is attributable to highway users
2 in that State during that fiscal year, reduced by a
3 pro rata share withheld by the Secretary to fund
4 contract authority for programs of the National
5 Highway Traffic Safety Administration and the Fed-
6 eral Motor Carrier Safety Administration.

7 “(2) TRANSFERS UNDER PROGRAM.—

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

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

13 “(ii) on the basis of estimates by the
14 Secretary, in consultation with the Sec-
15 retary of the Treasury, based on the most
16 recent data available, with proper adjust-
17 ments made in amounts subsequently
18 transferred to the extent prior estimates
19 were in excess of, or less than, the
20 amounts required to be transferred.

21 “(B) LIMITATION.—

22 “(i) IN GENERAL.—An adjustment
23 under subparagraph (A)(ii) to any transfer
24 may not exceed 5 percent of the trans-

1 ferred amount to which the adjustment re-
2 lates.

3 “(ii) SUBSEQUENT ADJUSTMENTS.—If
4 the adjustment required under subpara-
5 graph (A)(ii) exceeds that percentage, the
6 excess shall be taken into account in mak-
7 ing subsequent adjustments under sub-
8 paragraph (A)(ii).

9 “(f) APPLICATION WITH OTHER AUTHORITY.—Any
10 contract authority under this chapter (and any obligation
11 limitation) authorized for a State for a fiscal year for
12 which an election by that State is in effect under sub-
13 section (b)—

14 “(1) shall be rescinded or canceled; and

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

18 “(g) MAINTENANCE OF EFFORT.—

19 “(1) IN GENERAL.—Not later than 30 days
20 after the date on which an amount is distributed to
21 a State or State agency under this section, the Gov-
22 ernor of the State shall certify to the Secretary that
23 the State will maintain the effort of the State with
24 regard to State funding for the types of projects
25 that are funded by the amounts.

1 “(2) AMOUNTS.—As part of the certification,
2 the Governor shall submit to the Secretary a de-
3 scription of the amount of funds the State plans to
4 expend from State sources during the covered pe-
5 riod, for the types of projects that are funded by the
6 amounts.

7 “(h) TREATMENT OF GENERAL REVENUES.—For
8 purposes of this section, any general revenue funds appro-
9 priated to the Highway Trust Fund shall be transferred
10 to a State under the program in the manner described
11 in subsection (e)(1).”.

12 (b) CONFORMING AMENDMENT.—The analysis for
13 chapter 1 of title 23, United States Code (as amended by
14 section 1115(b)), is amended by adding at the end the
15 following:

“168. Direct Federal-aid highway program”.

16 **SEC. ___002. ALTERNATIVE FUNDING OF PUBLIC TRANS-**
17 **PORTATION PROGRAMS.**

18 (a) IN GENERAL.—Chapter 53 of title 49, United
19 States Code, is amended by adding at the end the fol-
20 lowing:

21 **“§ 5341. Alternative funding of public transportation**
22 **programs**

23 “(a) DEFINITIONS.—In this section—

1 “(1) ALTERNATIVE FUNDING PROGRAM.—The
2 term ‘alternative funding program’ means the pro-
3 gram established under subsection (c).

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

6 “(A) sections 5305, 5307, 5308, 5309,
7 5310, 5311, 5316, 5317, 5320, 5335, 5339,
8 and 5340; and

9 “(B) section 3038 of the Federal Transit
10 Act of 1998 (49 U.S.C. 5310 note; Public Law
11 105–178).

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

13 “(1) IN GENERAL.—Notwithstanding any other
14 provision of law, a State may elect not to participate
15 in all Federal programs relating to public transpor-
16 tation funded under the Mass Transit Account of
17 the Highway Trust Fund, including the Federal
18 public transportation programs under the
19 SAFETEA–LU (Public Law 109–59; 119 Stat.
20 1144), title 23, or this title.

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

23 “(A) assume all Federal obligations relat-
24 ing to each program that is the subject of the
25 election; and

1 “(B) fulfill those obligations using the
2 amounts transferred to the State under sub-
3 section (e).

4 “(c) PUBLIC TRANSPORTATION PROGRAM.—

5 “(1) PROGRAM ESTABLISHED.—Beginning in
6 fiscal year 2011, the Secretary shall carry out an al-
7 ternative funding program under which the legisla-
8 ture of a State may elect, not later than 90 days be-
9 fore the beginning of a fiscal year—

10 “(A) to waive the right of the State to re-
11 ceive amounts apportioned or allocated to the
12 State under the covered programs for the fiscal
13 year to which the election relates; and

14 “(B) to receive an amount for that fiscal
15 year that is determined in accordance with sub-
16 section (e).

17 “(2) PROGRAM REQUIREMENTS.—

18 “(A) IN GENERAL.—The Governor of a
19 State that participates in the alternative fund-
20 ing program shall—

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

23 “(I) the purposes, projects, and
24 uses to which amounts received under

1 the alternative funding program will
2 be used; and

3 “(II) which programmatic re-
4 quirements of this title the State
5 elects to continue;

6 “(ii) agree to obligate or expend
7 amounts received under the alternative
8 funding program exclusively for projects
9 that would be eligible for funding under
10 the covered programs if the State was not
11 participating in the alternative funding
12 program; and

13 “(iii) submit to the Secretary an an-
14 nual report on the use of amounts received
15 under the alternative funding program,
16 and to make the report available to the
17 public in an easily accessible format.

18 “(B) NO FEDERAL LIMITATION ON USE OF
19 FUNDS.—Except as provided in subparagraph
20 (A), the expenditure or obligation of funds re-
21 ceived by a State under the alternative funding
22 program shall not be subject to the provisions
23 of this title (except for this section), title 23, or
24 any other Federal law.

1 Trust Fund are made by the Secretary of
2 the Treasury; and

3 “(ii) on the basis of estimates by the
4 Secretary, in consultation with the Sec-
5 retary of the Treasury, based on the most
6 recent data available, with proper adjust-
7 ments made in amounts subsequently
8 transferred, to the extent prior estimates
9 were in excess of, or less than, the
10 amounts required to be transferred.

11 “(B) LIMITATION.—

12 “(i) IN GENERAL.—An adjustment
13 under subparagraph (A)(ii) to any transfer
14 may not exceed 5 percent of the trans-
15 ferred amount to which the adjustment re-
16 lates.

17 “(ii) SUBSEQUENT ADJUSTMENTS.—If
18 the adjustment required under subpara-
19 graph (A)(ii) exceeds that percentage, the
20 excess shall be taken into account in mak-
21 ing subsequent adjustments under sub-
22 paragraph (A)(ii).

23 “(f) CONTRACT AUTHORITY.—There shall be re-
24 scinded or canceled any contract authority under this
25 chapter (and any obligation limitation) authorized for a

1 State for a fiscal year for which the State elects to partici-
2 pate in the alternative funding program.

3 “(g) MAINTENANCE OF EFFORT.—

4 “(1) IN GENERAL.—Not later than 30 days
5 after the date on which an amount is distributed to
6 a State or State agency under this section, the Gov-
7 ernor of the State shall certify to the Secretary that
8 the State will maintain the effort of the State with
9 regard to State funding for the types of projects
10 that are funded by the amounts.

11 “(2) AMOUNTS.—The certification under para-
12 graph (1) shall include a description of the amount
13 of funds the State plans to expend from State
14 sources for projects funded under the alternative
15 funding program, during the fiscal year for which
16 the State elects to participate in the alternative
17 funding program.

18 “(h) TREATMENT OF GENERAL REVENUES.—For
19 purposes of this section, any general revenue funds appro-
20 priated to the Highway Trust Fund shall be transferred
21 to a State under the program in the manner described
22 in subsection (e).”.

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

“5341. Alternative funding of public transportation programs”.