

**AMENDMENT TO H.R. 662, AS REPORTED
OFFERED BY MR. FLAKE OF ARIZONA**

At the end of the bill, add the following (and conform the table of contents accordingly):

1 **TITLE V—HIGHWAY FAIRNESS**
2 **AND REFORM**

3 **SEC. 501. ELECTION TO RECEIVE STATE'S CONTRIBUTIONS**
4 **TO HIGHWAY TRUST FUND IN LIEU OF PAR-**
5 **TICIPATING IN FEDERAL-AID HIGHWAY PRO-**
6 **GRAM.**

7 (a) IN GENERAL.—Chapter 1 of title 23, United
8 States Code, is amended by inserting after section 149 the
9 following:

10 **“§ 150. Direct Federal-aid highway program**

11 “(a) IN GENERAL.—Beginning with fiscal year 2011,
12 the Secretary shall carry out a direct Federal-aid highway
13 program in accordance with the requirements of this sec-
14 tion. Under the program, the Governor or chief executive
15 officer of a State may elect, not less than 90 days before
16 the beginning of the fiscal year, to have the State waive
17 its right to receive amounts apportioned or allocated to
18 it under the Federal-aid highway program for the fiscal
19 year to which the election relates; and to receive instead

1 the amount determined under subsection (d) for that fiscal
2 year. The election shall be made in such form and manner
3 as the Secretary may require and shall be irrevocable.

4 “(b) STATE RESPONSIBILITY.—

5 “(1) IN GENERAL.—The Secretary shall accept
6 an election under subsection (a) if the Secretary de-
7 termines that the State—

8 “(A) has an interstate maintenance pro-
9 gram and agrees to maintain the interstate in
10 accordance with that program;

11 “(B) submits a plan to the Secretary de-
12 scribing—

13 “(i) the purposes, projects, and uses
14 to which amounts received under the pro-
15 gram will be put; and

16 “(ii) which programmatic require-
17 ments of this title the State elects to con-
18 tinue;

19 “(C) agrees to obligate or expend amounts
20 received under the program exclusively for
21 projects that would be eligible for funding
22 under section 133(b) of this title if the State
23 were not participating in the program; and

24 “(D) agrees to report annually to the Sec-
25 retary on the use of amounts received under the

1 program and to make the report available to
2 the public in an easily accessible format.

3 “(2) SAFETY REQUIREMENTS.—The Secretary
4 may determine that requirements important for
5 transportation safety continue to apply to a State
6 that makes an election under subsection (a).

7 “(3) SURFACE TRANSPORTATION PROGRAM.—A
8 State that makes an election under subsection (a)
9 shall continue to suballocate funds to urbanized
10 areas and other areas using the formulae and rules
11 under section 133(d)(3) of this title.

12 “(4) NO LIMITATION ON USE OF FUNDS.—Ex-
13 cept as provided in paragraphs (1), (2), and (3), the
14 expenditure or obligation of funds received by the
15 State under the program are not subject to regula-
16 tion under this title or title 49.

17 “(c) EFFECT ON PRE-EXISTING OBLIGATIONS.—The
18 making of an election under subsection (a) shall not affect
19 any obligation, responsibility, or commitment of the State
20 under this title for any fiscal year with respect to—

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

23 “(2) any project or program funded under this
24 title in any fiscal year for which an election under
25 subsection (a) is not in effect.

1 “(d) TRANSFERS.—

2 “(1) IN GENERAL.—The amount to be trans-
3 ferred to a State under the program for a fiscal year
4 shall be the portion of the taxes appropriated to the
5 Highway Trust Fund under section 9503 of the In-
6 ternal Revenue Code of 1986, other than for the
7 Mass Transit Account, for a fiscal year for which an
8 election is in effect under subsection (a) that is at-
9 tributable to highway users in that State during that
10 fiscal year, reduced by a pro rata share withheld by
11 the Secretary to fund contract authority for pro-
12 grams of the National Highway Traffic Safety Ad-
13 ministration and the Federal Motor Carrier Safety
14 Administration.

15 “(2) GENERAL FUND AMOUNTS.—For purposes
16 of paragraph (1), any amounts deposited in or cred-
17 ited to the Highway Trust Fund from the general
18 fund of the Treasury shall be treated as if they were
19 taxes appropriated to the Fund.

20 “(3) TRANSFERS.—

21 “(A) IN GENERAL.—Transfers under the
22 program—

23 “(i) shall be made at the same time as
24 deposits to the Highway Trust Fund are
25 made by the Secretary of the Treasury;

1 “(ii) shall be made on the basis of es-
2 timates by the Secretary, in consultation
3 with the Secretary of the Treasury, and
4 proper adjustments shall be made in
5 amounts subsequently transferred to the
6 extent prior estimates were in excess of, or
7 less than, the amounts required to be
8 transferred.

9 “(B) LIMITATION.—An adjustment under
10 subparagraph (A)(ii) to any transfer may not
11 exceed 5 percent of the transferred amount to
12 which the adjustment relates. If the adjustment
13 required under subparagraph (A)(ii) exceeds
14 that percentage, the excess shall be taken into
15 account in making subsequent adjustments
16 under subparagraph (A)(ii).

17 “(e) APPLICATION WITH OTHER AUTHORITY.—The
18 Secretary shall rescind or cancel any contract authority
19 under this chapter (and any obligation limitation) for a
20 State for a fiscal year for which an election by that State
21 is in effect under subsection (a).”.

22 (b) CLERICAL AMENDMENT.—The chapter analysis
23 for chapter 1 of title 23, United States Code, is amended

- 1 by inserting after the item relating to section 149 the fol-
- 2 lowing:

“150. Direct Federal-aid highway program.”.

