

109TH CONGRESS  
1ST SESSION

# H. R. 2284

To empower States with authority for most taxing and spending for highway programs and mass transit programs, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 11, 2005

Mr. FLAKE introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To empower States with authority for most taxing and spending for highway programs and mass transit programs, and for other purposes.

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 “Transportation Em-  
5       powerment Act”.

6       **SEC. 2. FINDINGS AND PURPOSES.**

7       (a) FINDINGS.—Congress finds that—

1           (1) the objective of the Federal highway pro-  
2           gram has been to facilitate the construction of a  
3           modern freeway system that promotes efficient inter-  
4           state commerce by connecting all States;

5           (2) that objective has been attained, and the  
6           Interstate System connecting all States is near com-  
7           pletion;

8           (3) today, surface transportation problems are  
9           increasingly local and regional;

10          (4) each State, not a central bureaucracy, can  
11          better fulfill the responsibility of providing an effi-  
12          cient transportation network for the residents of the  
13          State;

14          (5) each State has the means to build and oper-  
15          ate a network of transportation systems, including  
16          highways, that best serves the needs of the State;

17          (6) each State is best capable of determining  
18          the needs of the State and acting on those needs;

19          (7) the Federal role in highway transportation  
20          has, over time, usurped the role of the States by tax-  
21          ing fuels used in the States and then distributing  
22          the proceeds to the States based on the Federal  
23          Government's perceptions of what is best for the  
24          States;

1           (8) the Federal Government has used the Fed-  
2           eral gasoline tax revenues to force all States to take  
3           actions that are not necessarily appropriate for indi-  
4           vidual States;

5           (9) the Federal distribution, review, and en-  
6           forcement process wastes billions of dollars on un-  
7           productive activities;

8           (10) the Federal distribution is inequitable and  
9           biased against certain regions;

10          (11) Federal mandates that apply uniformly to  
11          all 50 States, regardless of the different cir-  
12          cumstances of the States, cause the States to waste  
13          billions of hard-earned tax dollars on projects, pro-  
14          grams, and activities that the States would not oth-  
15          erwise undertake; and

16          (12) Congress has expressed a strong interest  
17          in reducing the role of the Federal Government by  
18          allowing each State to manage its own affairs.

19          (b) PURPOSES.—The purposes of this Act are—

20               (1) to return to the individual States maximum  
21               discretionary authority and fiscal responsibility for  
22               all elements of the national surface transportation  
23               systems that are not within the direct purview of the  
24               Federal Government;

1           (2) to preserve Federal responsibility for the  
2 Dwight D. Eisenhower National System of Inter-  
3 state and Defense Highways;

4           (3) to preserve the responsibility of the Depart-  
5 ment of Transportation for—

6                 (A) design, construction, and preservation  
7 of transportation facilities on Federal public  
8 land;

9                 (B) national programs of transportation  
10 safety research and development; and

11                (C) emergency assistance to the States in  
12 response to natural disasters;

13           (4) to eliminate to the maximum extent prac-  
14 ticable Federal obstacles to the ability of each State  
15 to apply innovative solutions to the financing, de-  
16 sign, construction, operation, and preservation of  
17 Federal and State transportation facilities; and

18           (5) with respect to transportation activities car-  
19 ried out by States, local governments, and the pri-  
20 vate sector, to encourage—

21                 (A) competition among States, local gov-  
22 ernments, and the private sector; and

23                 (B) innovation, energy efficiency, private  
24 sector participation, and productivity.

1 **SEC. 3. CONTINUATION OF FUNDING FOR ESSENTIAL HIGH-**  
2 **WAY PROGRAMS.**

3 (a) IN GENERAL.—

4 (1) FUNDING.—For the purpose of carrying out  
5 title 23, United States Code, the following sums are  
6 authorized to be appropriated out of the Highway  
7 Trust Fund:

8 (A) INTERSTATE MAINTENANCE PRO-  
9 GRAM.—For the Interstate maintenance pro-  
10 gram under section 119 of title 23, United  
11 States Code, \$5,600,000,000 for fiscal year  
12 2006, \$5,700,000,000 for fiscal year 2007,  
13 \$5,800,000,000 for fiscal year 2008,  
14 \$5,900,000,000 for fiscal year 2009,  
15 \$6,000,000,000 for fiscal year 2010, and  
16 \$6,100,000,000 for fiscal year 2011.

17 (B) INTERSTATE AND INDIAN RESERVA-  
18 TION BRIDGE PROGRAM.—For the Interstate  
19 and Indian reservation bridge program under  
20 section 144 of that title \$1,500,000,000 for fis-  
21 cal year 2006, \$1,600,000,000 for fiscal year  
22 2007, \$1,700,000,000 for fiscal year 2008,  
23 \$1,800,000,000 for fiscal year 2009,  
24 \$1,900,000,000 for fiscal year 2010, and  
25 \$2,000,000,000 for fiscal year 2011.

1 (C) FEDERAL LANDS HIGHWAYS PRO-  
2 GRAM.—

3 (i) INDIAN RESERVATION ROADS.—  
4 For Indian reservation roads under section  
5 204 of that title \$300,000,000 for each of  
6 fiscal years 2006 through 2011.

7 (ii) PUBLIC LANDS HIGHWAYS.—For  
8 public lands highways under section 204 of  
9 that title \$275,000,000 for each of fiscal  
10 years 2006 through 2011.

11 (iii) PARKWAYS AND PARK ROADS.—  
12 For parkways and park roads under sec-  
13 tion 204 of that title \$200,000,000 for  
14 each of fiscal years 2006 through 2011.

15 (D) HIGHWAY SAFETY PROGRAMS.—

16 (i) IN GENERAL.—For highway safety  
17 programs under section 402 of that title  
18 \$170,000,000 for each of fiscal years 2006  
19 through 2011.

20 (ii) HIGHWAY SAFETY RESEARCH AND  
21 DEVELOPMENT.—For highway safety re-  
22 search and development under section 403  
23 of that title \$30,000,000 for each of fiscal  
24 years 2006 through 2011.

1 (E) TRANSPORTATION RESEARCH PRO-  
2 GRAMS.—

3 (i) SURFACE TRANSPORTATION RE-  
4 SEARCH.—For cooperative agreements  
5 with nonprofit research organizations to  
6 carry out research under section 502 of  
7 that title \$150,000,000 for each of fiscal  
8 years 2006 through 2011.

9 (ii) ITS RESEARCH AND DEVELOP-  
10 MENT.—For carrying out section 5207 of  
11 the Transportation Equity Act for the 21st  
12 Century (23 U.S.C. 502 note; 112 Stat.  
13 457) \$220,000,000 for each of fiscal years  
14 2006 through 2011, of which—

15 (I) \$110,000,000 for each fiscal  
16 year shall be made available for re-  
17 search; and

18 (II) \$110,000,000 for each fiscal  
19 year shall be made available for devel-  
20 opment and operational tests.

21 (iii) UNIVERSITY TRANSPORTATION  
22 RESEARCH.—For carrying out section  
23 5505 of title 49, United States Code,  
24 \$20,000,000 for each of fiscal years 2006  
25 through 2011.

1           (2) TRANSFERABILITY OF FUNDS.—Section 104  
2 of title 23, United States Code, is amended by strik-  
3 ing subsection (g) and inserting the following:

4           “(g) TRANSFERABILITY OF FUNDS.—

5           “(1) IN GENERAL.—To the extent that a State  
6 determines that funds made available under this title  
7 to the State for a purpose are in excess of the needs  
8 of the State for that purpose, the State may transfer  
9 the excess funds to, and use the excess funds for,  
10 any surface transportation (including mass transit  
11 and rail) purpose in the State.

12           “(2) ENFORCEMENT.—If the Secretary deter-  
13 mines that a State has transferred funds under  
14 paragraph (1) to a purpose that is not a surface  
15 transportation purpose as described in paragraph  
16 (1), the amount of the improperly transferred funds  
17 shall be deducted from any amount the State would  
18 otherwise receive from the Highway Trust Fund for  
19 the fiscal year that begins after the date of the de-  
20 termination.”.

21           (3) FEDERAL-AID SYSTEM.—Section 103(a) of  
22 title 23, United States Code, is amended by striking  
23 “systems are the Interstate System and the National  
24 Highway System” and inserting “system is the  
25 Interstate System”.



1           (4) INTERSTATE MAINTENANCE PROGRAM.—  
 2           Section 104(b) of title 23, United States Code, is  
 3           amended by striking paragraph (4) and inserting the  
 4           following:

5           “(4) INTERSTATE MAINTENANCE COMPO-  
 6           NENT.—For each of fiscal years 2005 through 2010,  
 7           for the Interstate maintenance program under sec-  
 8           tion 119, 1 percent to the Virgin Islands, Guam,  
 9           American Samoa, and the Commonwealth of the  
 10          Northern Mariana Islands and the remaining 99  
 11          percent apportioned as follows:

12           “(A)(i) For each State with an average  
 13          population density of 20 persons or fewer per  
 14          square mile, and each State with a population  
 15          of 1,500,000 persons or fewer and with a land  
 16          area of 10,000 square miles or less, the greater  
 17          of—

18           “(I) a percentage share of apportion-  
 19          ments equal to the percentage listed for  
 20          the State in clause (ii); or

21           “(II) a share determined under sub-  
 22          paragraph (B).

23           “(ii) The percentage referred to in clause  
 24          (i)(I) is as follows:

“States:	Percentage:
Alabama .....	2.0269
Alaska .....	1.1915

Arizona .....	1.5581
Arkansas .....	1.3214
California .....	9.1962
Colorado .....	1.1673
Connecticut .....	1.5186
Delaware .....	0.4424
District of Columbia .....	0.3956
Florida .....	4.6176
Georgia .....	3.5104
Hawaii .....	0.5177
Idaho .....	0.7718
Illinois .....	3.3819
Indiana .....	2.3588
Iowa .....	1.2020
Kansas .....	1.1717
Kentucky .....	1.7365
Louisiana .....	1.5900
Maine .....	0.5263
Maryland .....	1.5087
Massachusetts .....	1.8638
Michigan .....	3.1535
Minnesota .....	1.4993
Mississippi .....	1.2186
Missouri .....	2.3615
Montana .....	0.9929
Nebraska .....	0.7768
Nevada .....	0.7248
New Hampshire .....	0.5163
New Jersey .....	2.5816
New Mexico .....	0.9884
New York .....	5.1628
North Carolina .....	2.8298
North Dakota .....	0.6553
Ohio .....	3.4257
Oklahoma .....	1.5419
Oregon .....	1.2183
Pennsylvania .....	4.9887
Puerto Rico .....	0.5000
Rhode Island .....	0.5958
South Carolina .....	1.5910
South Dakota .....	0.7149
Tennessee .....	2.2646
Texas .....	7.2131
Utah .....	0.7831
Vermont .....	0.4573
Virginia .....	2.5627
Washington .....	1.7875
West Virginia .....	1.1319
Wisconsin .....	1.9916
Wyoming .....	0.6951.

1                   “(B) For each State not described in sub-  
2                   paragraph (A), a share of the apportionments

1 remaining determined in accordance with the  
2 following formula:

3 “(i)  $\frac{1}{9}$  in the ratio that the total rural  
4 lane miles in each State bears to the total  
5 rural lane miles in all States with an aver-  
6 age population density greater than 20  
7 persons per square mile and all States with  
8 a population of more than 1,500,000 per-  
9 sons and with a land area of more than  
10 10,000 square miles.

11 “(ii)  $\frac{1}{9}$  in the ratio that the total  
12 rural vehicle miles traveled in each State  
13 bears to the total rural vehicle miles trav-  
14 eled in all States described in clause (i).

15 “(iii)  $\frac{2}{9}$  in the ratio that the total  
16 urban lane miles in each State bears to the  
17 total urban lane miles in all States de-  
18 scribed in clause (i).

19 “(iv)  $\frac{2}{9}$  in the ratio that the total  
20 urban vehicle miles traveled in each State  
21 bears to the total urban vehicle miles trav-  
22 eled in all States described in clause (i).

23 “(v)  $\frac{3}{9}$  in the ratio that the total die-  
24 sel fuel used in each State bears to the

1 total diesel fuel used in all States described  
2 in clause (i).”.

3 (5) INTERSTATE BRIDGE PROGRAM.—Section  
4 144 of title 23, United States Code, is amended—

5 (A) in subsection (d)—

6 (i) by inserting “on the Federal-aid  
7 system or described in subsection (c)(3)”  
8 after “highway bridge” each place it ap-  
9 pears; and

10 (ii) by inserting “on the Federal-aid  
11 system or described in subsection (c)(3)”  
12 after “highway bridges” each place it ap-  
13 pears;

14 (B) in the second sentence of subsection  
15 (e)—

16 (i) in paragraph (1), by adding “and”  
17 at the end;

18 (ii) in paragraph (2), by striking the  
19 comma at the end and inserting a period;  
20 and

21 (iii) by striking paragraphs (3) and  
22 (4);

23 (C) in the first sentence of subsection (l),  
24 by inserting “on the Federal-aid system or de-

1 scribed in subsection (c)(3)” after “any  
2 bridge”;

3 (D) in subsection (m)(1), by inserting “on  
4 the Federal-aid system or described in sub-  
5 section (c)(3)” after “construct any bridge”;  
6 and

7 (E) in the first sentence of subsection (n),  
8 by inserting “for each of fiscal years 2006  
9 through 2011,” after “of law,”.

10 (6) NATIONAL DEFENSE HIGHWAYS.—Section  
11 311 of title 23, United States Code, is amended—

12 (A) in the first sentence, by striking  
13 “under subsection (a) of section 104 of this  
14 title” and inserting “to carry out this section”;  
15 and

16 (B) by striking the second sentence.

17 (7) MOTOR CARRIER SAFETY GRANTS.—Section  
18 31104(a) of title 49, United States Code, is amend-  
19 ed by adding at the end the following:

20 “(6) Not more than \$110,000,000 for each of  
21 fiscal years 2005 through 2010.”.

22 (b) EXPENDITURES FROM HIGHWAY TRUST  
23 FUND.—

24 (1) EXPENDITURES FOR ESSENTIAL PRO-  
25 GRAMS.—Section 9503(c) of the Internal Revenue

1 Code of 1986 (relating to expenditures from High-  
2 way Trust Fund) is amended—

3 (A) in paragraph (1), by striking “June 1,  
4 2005” and inserting “October 1, 2011”;

5 (B) in paragraphs (2)(A)(i)(III), (2)(A)(ii),  
6 (4)(A)(i), and (5)(A), by striking “October 1,  
7 2005” and inserting “October 1, 2011”;

8 (C) in paragraph (1)—

9 (i) in subparagraph (J), by striking  
10 “or” at the end;

11 (ii) in subparagraph (K), by striking  
12 the period and inserting “, or”;

13 (iii) by inserting after subparagraph  
14 (K) the following:

15 “(L) authorized to be paid out of the  
16 Highway Trust Fund under the Transportation  
17 Empowerment Act.”; and

18 (iv) by striking the last sentence and  
19 inserting the following new flush sentence:

20 “In determining the authorizations under the Acts  
21 referred to in the preceding subparagraphs, such  
22 Acts shall be applied as in effect on the date of en-  
23 actment of the Transportation Empowerment Act.”;  
24 and

1 (D) in paragraphs (2)(A)(i) and (3), by  
2 striking “July 1, 2006” each place it appears  
3 and inserting “July 1, 2011”.

4 (2) AMOUNTS AVAILABLE FOR ESSENTIAL PRO-  
5 GRAM EXPENDITURES.—Section 9503 of such Code  
6 (relating to the Highway Trust Fund) is amended  
7 by adding at the end the following:

8 “(g) ESSENTIAL PROGRAMS FINANCING RATE.—For  
9 purposes of this section—

10 “(1) IN GENERAL.—Except as provided in para-  
11 graph (2), in the case of gasoline, special motor  
12 fuels, kerosene, and diesel fuel, the essential pro-  
13 grams financing rate is—

14 “(A) after September 30, 2005, and before  
15 October 1, 2006, so much of the rate of the  
16 taxes described in subparagraphs (A) and (D)  
17 of subsection (b)(1) transferred to the Highway  
18 Trust Fund as does not exceed 16.3 cents per  
19 gallon,

20 “(B) after September 30, 2006, and before  
21 October 1, 2007, so much of the rate of such  
22 taxes as does not exceed 11.3 cents per gallon,

23 “(C) after September 30, 2007, and before  
24 October 1, 2008, so much of the rate of such  
25 taxes as does not exceed 8.3 cents per gallon,

1           “(D) after September 30, 2008, and before  
2           October 1, 2009, so much of the rate of such  
3           taxes as does not exceed 7.3 cents per gallon,  
4           and

5           “(E) after September 30, 2009, the rate of  
6           such taxes.

7           “(2) APPLICATION OF RATE.—In the case of  
8           fuels used as described in paragraph (4)(D) and  
9           (5)(B) of subsection (c), the essential programs fi-  
10          nancing rate is zero.”.

11          (c) TERMINATION OF TRANSFERS TO MASS TRANSIT  
12          ACCOUNT.—

13           (1) IN GENERAL.—Section 9503(e)(2) of the  
14          Internal Revenue Code of 1986 (relating to Mass  
15          Transit Account) is amended by adding at the end  
16          the following new flush sentence:

17          No transfers shall be made under this paragraph  
18          after September 30, 2005.

19           (2) AUTHORIZATION TO EXPEND REMAINING  
20          BALANCES IN ACCOUNT.—Section 9503(e)(3) of such  
21          Code is amended by striking “before June 1, 2005”.

22          (d) EFFECTIVE DATE.—The amendments made by  
23          this section take effect on October 1, 2005.



1 **SEC. 4. INFRASTRUCTURE SPECIAL ASSISTANCE FUND.**

2 (a) BALANCE OF ESSENTIAL PROGRAMS FINANCING  
3 RATE DEPOSITED IN FUND.—Section 9503 of the Inter-  
4 nal Revenue Code of 1986 (as amended by section 3(b)(2))  
5 is amended by adding at the end the following:

6 “(h) ESTABLISHMENT OF INFRASTRUCTURE SPE-  
7 CIAL ASSISTANCE FUND.—

8 “(1) CREATION OF FUND.—There is established  
9 in the Highway Trust Fund a separate fund to be  
10 known as the ‘Infrastructure Special Assistance  
11 Fund’ consisting of such amounts as may be trans-  
12 ferred or credited to the Infrastructure Special As-  
13 sistance Fund as provided in this subsection or sec-  
14 tion 9602(b).

15 “(2) TRANSFERS TO INFRASTRUCTURE SPECIAL  
16 ASSISTANCE FUND.—On the first day of each fiscal  
17 year, the Secretary, in consultation with the Sec-  
18 retary of Transportation, shall determine the excess  
19 (if any) of—

20 “(A) the sum of—

21 “(i) the amounts appropriated in such  
22 fiscal year to the Highway Trust Fund  
23 under subsection (b) which are attributable  
24 to the essential programs financing rate  
25 for such year, plus

1           “(ii) the amounts appropriated in  
2           such fiscal year to the Highway Trust  
3           Fund under subsection (b) which are at-  
4           tributable to taxes under sections 4051,  
5           4061, 4071, and 4481 for such year, over

6           “(B) the amount appropriated under sub-  
7           section (c) for such fiscal year,  
8           and shall transfer such excess to the Infrastructure  
9           Special Assistance Fund.

10           “(3) EXPENDITURES FROM INFRASTRUCTURE  
11           SPECIAL ASSISTANCE FUND.—

12           “(A) TRANSITIONAL ASSISTANCE.—

13           “(i) IN GENERAL.—Except as pro-  
14           vided in clause (iv), during fiscal years  
15           2006 through 2009, \$1,000,000,000 in the  
16           Infrastructure Special Assistance Fund  
17           shall be available to States for transpor-  
18           tation-related program expenditures.

19           “(ii) STATE SHARE.—

20           “(I) IN GENERAL.—Except as  
21           provided in clause (v), each State is  
22           entitled to a share of the amount  
23           specified in clause (i) upon enactment  
24           of legislation providing 1 of the 2

1 funding mechanisms described in  
2 clause (iii).

3 “(II) DETERMINATION OF STATE  
4 SHARE.—For purposes of subclause  
5 (I), each State’s share shall be deter-  
6 mined in the following manner:

7 “(aa) Multiply the percent-  
8 age of the amounts appropriated  
9 in the latest fiscal year for which  
10 such data are available to the  
11 Highway Trust Fund under sub-  
12 section (b) which is attributable  
13 to taxes paid by highway users in  
14 the State, by the amount speci-  
15 fied in clause (i). If the result  
16 does not exceed \$15,000,000, the  
17 State’s share equals  
18 \$15,000,000. If the result ex-  
19 ceeds \$15,000,000, the State’s  
20 share is determined under item  
21 (bb).

22 “(bb) Multiply the percent-  
23 age determined under item (aa),  
24 by the amount specified in clause  
25 (i) reduced by an amount equal

1 to \$15,000,000 times the number  
2 of States the share of which is  
3 determined under item (aa).

4 “(iii) LEGISLATIVE FUNDING MECHA-  
5 NISMS.—A funding mechanism is described  
6 in this clause as follows:

7 “(I) A funding mechanism which  
8 results in revenues for transportation-  
9 related projects in the State for fiscal  
10 year 2010 and each succeeding fiscal  
11 year which are equal to the excess  
12 of—

13 “(aa) the mean annual aver-  
14 age of distributions from the  
15 Highway Trust Fund to the  
16 State for fiscal years 2000  
17 through 2005; over

18 “(bb) the distributions from  
19 the Highway Trust Fund to the  
20 State for such fiscal year attrib-  
21 utable to the essential programs  
22 financing rate for such year.

23 “(II) A funding mechanism  
24 which results in an increase in the  
25 State rate of tax on motor fuels equal

1 to the decrease in the rate of tax on  
2 such fuels under section 4081 for fis-  
3 cal year 2010 and any succeeding fis-  
4 cal year.

5 “(iv) DISTRIBUTION OF REMAINING  
6 AMOUNT.—If after September 30, 2009, a  
7 portion of the amount specified in clause  
8 (i) remains, the Secretary, in consultation  
9 with the Secretary of Transportation,  
10 shall, on October 1, 2009, apportion the  
11 portion among the States which received a  
12 share of such amount under clause (ii) and  
13 which are not described in clause (v) using  
14 the percentages determined under clause  
15 (ii)(II)(aa) for such States.

16 “(v) ENFORCEMENT OF FUNDING  
17 MECHANISM REQUIREMENT.—If a State,  
18 which enacted legislation providing for a  
19 funding mechanism described in clause  
20 (iii), terminates such mechanism before fis-  
21 cal year 2009, the State’s share deter-  
22 mined under clauses (ii) and (iv) shall be  
23 deducted from any amount the State would  
24 otherwise receive from the Highway Trust  
25 Fund for fiscal year 2009.

1                   “(B) ADDITIONAL EXPENDITURES FROM  
2                   FUND.—

3                   “(i) IN GENERAL.—Amounts in the  
4                   Infrastructure Special Assistance Fund, in  
5                   excess of the amount specified in subpara-  
6                   graph (A)(i), shall be available, as provided  
7                   by appropriation Acts, to the States for  
8                   any surface transportation (including mass  
9                   transit and rail) purpose in such States,  
10                  and the Secretary shall apportion such ex-  
11                  cess amounts among all States using the  
12                  percentages determined under clause  
13                  (ii)(II)(aa) for such States.

14                  “(ii) ENFORCEMENT.—If the Sec-  
15                  retary determines that a State has used  
16                  amounts under clause (i) for a purpose  
17                  which is not a surface transportation pur-  
18                  pose as described in clause (i), the improv-  
19                  perly used amounts shall be deducted from  
20                  any amount the State would otherwise re-  
21                  ceive from the Highway Trust Fund for  
22                  the fiscal year which begins after the date  
23                  of the determination.”.

24                  (b) EFFECTIVE DATE.—The amendment made by  
25                  this section takes effect on October 1, 2005.

1 **SEC. 5. RETURN OF EXCESS TAX RECEIPTS TO STATES.**

2 (a) IN GENERAL.—Section 9503(c) of the Internal  
3 Revenue Code of 1986 is amended by adding at the end  
4 the following:

5 “(6) RETURN OF EXCESS TAX RECEIPTS TO  
6 STATES FOR SURFACE TRANSPORTATION PUR-  
7 POSES.—

8 “(A) IN GENERAL.—On the first day of  
9 each of fiscal years 2006, 2007, 2008, and  
10 2009, the Secretary, in consultation with the  
11 Secretary of Transportation, shall—

12 “(i) determine the excess (if any) of—

13 “(I) the amounts appropriated in  
14 such fiscal year to the Highway Trust  
15 Fund under subsection (b) which are  
16 equivalent to the taxes attributable to  
17 the excess of—

18 “(aa) the Highway Trust  
19 Fund financing rate for such  
20 year, over

21 “(bb) the essential programs  
22 financing rate for such year, over

23 “(II) the amounts so appro-  
24 priated which are equivalent to the  
25 taxes described in paragraphs (4)(D)  
26 and (5)(B), and

1           “(ii) allocate the amount determined  
2           under clause (i) among the States (as de-  
3           fined in section 101(a) of title 23, United  
4           States Code) for surface transportation  
5           (including mass transit and rail) purposes  
6           so that—

7                   “(I) the percentage of that  
8                   amount allocated to each State, is  
9                   equal to

10                   “(II) the percentage of the  
11                   amount determined under clause (i)(I)  
12                   paid into the Highway Trust Fund in  
13                   the latest fiscal year for which such  
14                   data are available which is attrib-  
15                   utable to highway users in the State.

16           “(B) ENFORCEMENT.—If the Secretary  
17           determines that a State has used amounts  
18           under subparagraph (A) for a purpose which is  
19           not a surface transportation purpose as de-  
20           scribed in subparagraph (A), the improperly  
21           used amounts shall be deducted from any  
22           amount the State would otherwise receive from  
23           the Highway Trust Fund for the fiscal year  
24           which begins after the date of the determina-  
25           tion.”.



1 (b) EFFECTIVE DATE.—The amendment made by  
2 this section takes effect on October 1, 2005.

3 **SEC. 6. FEDERAL-AID FACILITY PRIVATIZATION.**

4 (a) DEFINITIONS.—In this section—

5 (1) EXECUTIVE AGENCY.—The term “Executive  
6 agency” has the meaning provided in section 105 of  
7 title 5, United States Code.

8 (2) PRIVATIZATION.—The term “privatization”  
9 means the disposition or transfer of a transportation  
10 infrastructure asset, whether by sale, lease, or simi-  
11 lar arrangement, from a Federal, State, or local gov-  
12 ernment to a private party.

13 (3) STATE OR LOCAL GOVERNMENT.—The term  
14 “State or local government” means the government  
15 of—

16 (A) any State;

17 (B) the District of Columbia;

18 (C) any commonwealth, territory, or pos-  
19 session of the United States;

20 (D) any county, municipality, city, town,  
21 township, local public authority, school district,  
22 special district, intrastate district, regional or  
23 interstate government entity, council of govern-  
24 ments, or agency or instrumentality of a local  
25 government; or

1 (E) any federally recognized Indian tribe.

2 (4) TRANSPORTATION INFRASTRUCTURE  
3 ASSET.—

4 (A) IN GENERAL.—The term “transportation infrastructure asset” means any surface-  
5 transportation-related asset financed in whole  
6 or in part by the Federal Government, including a road, tunnel, bridge, or mass-transit-related or rail-related asset.  
7  
8  
9

10 (B) EXCLUSION.—The term does not include any transportation-related asset on the  
11 Interstate System (as defined in section 101 of  
12 title 23, United States Code).  
13

14 (b) PRIVATIZATION INITIATIVES BY STATE AND  
15 LOCAL GOVERNMENTS.—The head of each Executive  
16 agency shall—

17 (1) assist State and local governments in efforts  
18 to privatize the transportation infrastructure assets  
19 of the State and local governments; and

20 (2) subject to subsection (a), approve requests  
21 from State and local governments to privatize transportation infrastructure assets and waive or modify  
22 any condition relating to the original Federal program that funded the asset.  
23  
24

1 (c) CRITERIA.—The head of an Executive agency  
2 shall approve a request described in subsection (b)(2) if—

3 (1) the State or local government demonstrates  
4 that a market mechanism, legally enforceable agree-  
5 ment, or regulatory mechanism will ensure that the  
6 transportation infrastructure asset will continue to  
7 be used for the general objectives of the original  
8 Federal program that funded the asset (which shall  
9 not be considered to include every condition required  
10 for the recipient of Federal funds to have obtained  
11 the original Federal funds), so long as needed for  
12 those objectives; and

13 (2) the private party purchasing or leasing the  
14 transportation infrastructure asset agrees to comply  
15 with all applicable conditions of the original Federal  
16 program.

17 (d) LACK OF OBLIGATION TO REPAY FEDERAL  
18 FUNDS.—A State or local government shall have no obli-  
19 gation to repay to any agency of the Federal Government  
20 any Federal funds received by the State or local govern-  
21 ment in connection with a transportation infrastructure  
22 asset that is privatized under this section.

23 (e) USE OF PROCEEDS.—

24 (1) IN GENERAL.—Subject to paragraph (2), a  
25 State or local government may use proceeds from

1 the privatization of a transportation infrastructure  
2 asset to the extent permitted under applicable condi-  
3 tions of the original Federal program.

4 (2) RECOVER OF CERTAIN COSTS.—Notwith-  
5 standing any other provision of law, the State or  
6 local government shall be permitted to recover from  
7 the privatization of a transportation infrastructure  
8 asset—

9 (A) the capital investment in the transpor-  
10 tation infrastructure asset made by the State or  
11 local government;

12 (B) an amount equal to the unreimbursed  
13 operating expenses in the transportation infra-  
14 structure asset paid by the State or local gov-  
15 ernment; and

16 (C) a reasonable rate of return on the in-  
17 vestment made under subparagraph (A) and ex-  
18 penses paid under subparagraph (B).

19 **SEC. 7. REDUCTION IN TAXES ON GASOLINE, DIESEL FUEL,**  
20 **KEROSENE, AND SPECIAL FUELS FUNDING**  
21 **HIGHWAY TRUST FUND.**

22 (a) REDUCTION IN TAX RATE.—

23 (1) IN GENERAL.—Section 4081(a)(2)(A) of the  
24 Internal Revenue Code of 1986 (relating to rates of  
25 tax) is amended—

1 (A) in clause (i), by striking “18.3 cents”  
2 and inserting “3 cents”; and

3 (B) in clause (iii), by striking “24.3 cents”  
4 and inserting “3 cents”.

5 (2) CONFORMING AMENDMENT.—Section  
6 6427(b)(2)(A) of such Code is amended by striking  
7 “7.4 cents” and inserting “2.9 cents”.

8 (b) ADDITIONAL CONFORMING AMENDMENTS.—

9 (1) Section 4041(a)(1)(C)(iii)(I) of the Internal  
10 Revenue Code of 1986 is amended by striking “(4.3  
11 cents per gallon after September 30, 2005)” and in-  
12 serting “(zero after September 30, 2009)”.

13 (2) Section 4041(m)(1) of such Code is amend-  
14 ed—

15 (A) in subparagraph (A), by striking  
16 “2005” and inserting “2009”; and

17 (B) by striking subparagraph (B) and in-  
18 serting the following:

19 “(B) zero after September 30, 2009.”.

20 (3) Section 4081(d)(1) of such Code is amend-  
21 ed by striking “4.3 cents per gallon after September  
22 30, 2005” and inserting “zero after September 30,  
23 2011”.

24 (4) Section 9503(b) of such Code is amended—

1 (A) in paragraphs (1) and (2), by striking  
2 “October 1, 2005” each place it appears and  
3 inserting “October 1, 2011”;

4 (B) in the heading of paragraph (2), by  
5 striking “OCTOBER 1, 2005” and inserting “OC-  
6 TOBER 1, 2011”;

7 (C) in paragraph (2), by striking “after  
8 September 30, 2005, and before July 1, 2006”  
9 and inserting “after September 30, 2011, and  
10 before July 1, 2012”; and

11 (D) in paragraph (4), by striking “2005”  
12 each place it appears and inserting “2009”.

13 (c) FLOOR STOCK REFUNDS.—

14 (1) IN GENERAL.—If—

15 (A) before October 1, 2009, tax has been  
16 imposed under section 4081 of the Internal  
17 Revenue Code of 1986 on any liquid; and

18 (B) on such date such liquid is held by a  
19 dealer and has not been used and is intended  
20 for sale;

21 there shall be credited or refunded (without interest)  
22 to the person who paid such tax (in this subsection  
23 referred to as the “taxpayer”) an amount equal to  
24 the excess of the tax paid by the taxpayer over the

1 amount of such tax which would be imposed on such  
2 liquid had the taxable event occurred on such date.

3 (2) TIME FOR FILING CLAIMS.—No credit or re-  
4 fund shall be allowed or made under this subsection  
5 unless—

6 (A) claim therefor is filed with the Sec-  
7 retary of the Treasury before April 1, 2010;  
8 and

9 (B) in any case where liquid is held by a  
10 dealer (other than the taxpayer) on October 1,  
11 2009—

12 (i) the dealer submits a request for re-  
13 fund or credit to the taxpayer before Janu-  
14 ary 1, 2010; and

15 (ii) the taxpayer has repaid or agreed  
16 to repay the amount so claimed to such  
17 dealer or has obtained the written consent  
18 of such dealer to the allowance of the cred-  
19 it or the making of the refund.

20 (3) EXCEPTION FOR FUEL HELD IN RETAIL  
21 STOCKS.—No credit or refund shall be allowed under  
22 this subsection with respect to any liquid in retail  
23 stocks held at the place where intended to be sold  
24 at retail.

1           (4) DEFINITIONS.—For purposes of this sub-  
2           section, the terms “dealer” and “held by a dealer”  
3           have the respective meanings given to such terms by  
4           section 6412 of such Code; except that the term  
5           “dealer” includes a producer.

6           (5) CERTAIN RULES TO APPLY.—Rules similar  
7           to the rules of subsections (b) and (c) of section  
8           6412 and sections 6206 and 6675 of such Code shall  
9           apply for purposes of this subsection.

10          (d) EFFECTIVE DATE.—

11           (1) IN GENERAL.—Except as provided in para-  
12           graph (2), the amendments made by this section  
13           shall apply to fuel removed after September 30,  
14           2009.

15           (2) ADDITIONAL CONFORMING AMENDMENTS.—  
16           The amendments made by subsection (b) take effect  
17           on October 1, 2005.

○