

110TH CONGRESS  
2D SESSION

# S. 2823

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 SENATE OF THE UNITED STATES

APRIL 7, 2008

Mr. DEMINT introduced the following bill; which was read twice and referred to the Committee on Finance

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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—

8               (1) the objective of the Federal highway pro-  
9       gram has been to facilitate the construction of a

1 modern freeway system that promotes efficient inter-  
2 state commerce by connecting all States;

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

6 (3) each State has the responsibility of pro-  
7 viding an efficient transportation network for the  
8 residents of the State;

9 (4) each State has the means to build and oper-  
10 ate a network of transportation systems, including  
11 highways, that best serves the needs of the State;

12 (5) each State is best capable of determining  
13 the needs of the State and acting on those needs;

14 (6) the Federal role in highway transportation  
15 has, over time, usurped the role of the States by tax-  
16 ing motor fuels used in the States and then distrib-  
17 uting the proceeds to the States based on the Fed-  
18 eral Government's perceptions of what is best for the  
19 States;

20 (7) the Federal Government has used the Fed-  
21 eral motor fuels tax revenues to force all States to  
22 take actions that are not necessarily appropriate for  
23 individual States;

1           (8) the Federal distribution, review, and en-  
2           forcement process wastes billions of dollars on un-  
3           productive activities;

4           (9) Federal mandates that apply uniformly to  
5           all 50 States, regardless of the different cir-  
6           cumstances of the States, cause the States to waste  
7           billions of hard-earned tax dollars on projects, pro-  
8           grams, and activities that the States would not oth-  
9           erwise undertake; and

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

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

14               (1) to return to the individual States maximum  
15               discretionary authority and fiscal responsibility for  
16               all elements of the national surface transportation  
17               systems that are not within the direct purview of the  
18               Federal Government;

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

22               (3) to preserve the responsibility of the Depart-  
23               ment of Transportation for—

1 (A) design, construction, and preservation  
2 of transportation facilities on Federal public  
3 land;

4 (B) national programs of transportation  
5 research and development and transportation  
6 safety; and

7 (C) emergency assistance to the States in  
8 response to natural disasters;

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

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

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

19 (B) innovation, energy efficiency, private  
20 sector participation, and productivity.

21 **SEC. 3. CONTINUATION OF FUNDING FOR CORE HIGHWAY**  
22 **PROGRAMS.**

23 (a) IN GENERAL.—

24 (1) FUNDING.—For the purpose of carrying out  
25 title 23, United States Code, the following sums are

1 authorized to be appropriated out of the Highway  
2 Trust Fund:

3 (A) INTERSTATE MAINTENANCE PRO-  
4 GRAM.—For the Interstate maintenance pro-  
5 gram under section 119 of title 23, United  
6 States Code, \$5,200,000,000 for fiscal year  
7 2010, \$5,280,000,000 for fiscal year 2011,  
8 \$5,360,000,000 for fiscal year 2012,  
9 \$5,440,000,000 for fiscal year 2013, and  
10 \$5,520,000,000 for fiscal year 2014.

11 (B) EMERGENCY RELIEF.—For emergency  
12 relief under section 125 of that title,  
13 \$100,000,000 for each of fiscal years 2010  
14 through 2014.

15 (C) INTERSTATE BRIDGE PROGRAM.—For  
16 the Interstate bridge program under section  
17 144 of that title, \$2,527,000,000 for fiscal year  
18 2010, \$2,597,000,000 for fiscal year 2011,  
19 \$2,667,000,000 for fiscal year 2012,  
20 \$2,737,000,000 for fiscal year 2013, and  
21 \$2,807,000,000 for fiscal year 2014.

22 (D) FEDERAL LANDS HIGHWAYS PRO-  
23 GRAM.—

24 (i) INDIAN RESERVATION ROADS.—

25 For Indian reservation roads under section

1           204 of that title, \$470,000,000 for fiscal  
2           year 2010, \$510,000,000 for fiscal year  
3           2011, \$550,000,000 for fiscal year 2012,  
4           \$590,000,000 for fiscal year 2013, and  
5           \$630,000,000 for fiscal year 2014.

6           (ii) PUBLIC LANDS HIGHWAYS.—For  
7           public lands highways under section 204 of  
8           that title, \$300,000,000 for fiscal year  
9           2010, \$310,000,000 for fiscal year 2011,  
10          \$320,000,000 for fiscal year 2012,  
11          \$330,000,000 for fiscal year 2013, and  
12          \$340,000,000 for fiscal year 2014.

13          (iii) PARKWAYS AND PARK ROADS.—  
14          For parkways and park roads under sec-  
15          tion 204 of that title, \$255,000,000 for fis-  
16          cal year 2010, \$270,000,000 for fiscal year  
17          2011, \$285,000,000 for fiscal year 2012,  
18          \$300,000,000 for fiscal year 2013, and  
19          \$315,000,000 for fiscal year 2014.

20          (iv) REFUGE ROADS.—For refuge  
21          roads under section 204 of that title,  
22          \$32,000,000 for each of fiscal years 2010  
23          through 2014.

24          (E) HIGHWAY SAFETY PROGRAMS.—

1 (i) IN GENERAL.—For highway safety  
2 programs under section 402 of that title,  
3 \$170,000,000 for each of fiscal years 2010  
4 through 2014.

5 (ii) HIGHWAY SAFETY RESEARCH AND  
6 DEVELOPMENT.—For highway safety re-  
7 search and development under section 403  
8 of that title, \$35,000,000 for each of fiscal  
9 years 2010 through 2014.

10 (F) SURFACE TRANSPORTATION RE-  
11 SEARCH.—For cooperative agreements with  
12 nonprofit research organizations to carry out  
13 applied pavement research under section 502 of  
14 that title, \$200,000,000 for each of fiscal years  
15 2010 through 2014.

16 (G) ADMINISTRATIVE EXPENSES.—For ad-  
17 ministrative expenses incurred in carrying out  
18 the programs referred to in subparagraphs (A)  
19 through (F), \$92,890,000 for fiscal year 2010,  
20 \$95,040,000 for fiscal year 2011, \$97,190,000  
21 for fiscal year 2012, \$99,340,000 for fiscal year  
22 2013, and \$101,490,000 for fiscal year 2014.

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

1 “(g) TRANSFERABILITY OF FUNDS.—

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

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

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

23 (4) INTERSTATE MAINTENANCE PROGRAM.—  
24 Section 104(b) of title 23, United States Code, is



1 amended by striking paragraph (4) and inserting the  
2 following:

3 “(4) INTERSTATE MAINTENANCE COMPO-  
4 NENT.—For each of fiscal years 2010 through 2014,  
5 for the Interstate maintenance program under sec-  
6 tion 119, 1 percent to the Virgin Islands, Guam,  
7 American Samoa, and the Commonwealth of the  
8 Northern Mariana Islands and the remaining 99  
9 percent apportioned as follows:

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

16 “(I) a percentage share of apportion-  
17 ments equal to the percentage for the  
18 State described in clause (ii); or

19 “(II) a share determined under sub-  
20 paragraph (B).

21 “(ii) The percentage referred to in clause  
22 (i)(I) for a State for a fiscal year shall be the  
23 percentage calculated for the State for the fiscal  
24 year under section 105(b) of title 23, United  
25 States Code.

1           “(B) For each State not described in sub-  
2 paragraph (A), a share of the apportionments  
3 remaining determined in accordance with the  
4 following formula:

5           “(i)  $\frac{1}{9}$  in the ratio that the total rural  
6 lane miles in each State bears to the total  
7 rural lane miles in all States with an aver-  
8 age population density greater than 20  
9 persons per square mile and all States with  
10 a population of more than 1,500,000 per-  
11 sons and with a land area of more than  
12 10,000 square miles.

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

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

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

1           “(v)  $\frac{3}{9}$  in the ratio that the total die-  
2           sel fuel used in each State bears to the  
3           total diesel fuel used in all States described  
4           in clause (i).”.

5           (5) INTERSTATE BRIDGE PROGRAM.—Section  
6           144 of title 23, United States Code, is amended—

7           (A) in subsection (d)—

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

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

16          (B) in the second sentence of subsection  
17          (e)—

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

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

23          (iii) by striking paragraphs (3) and  
24          (4);

1 (C) in the first sentence of subsection (l),  
2 by inserting “on the Federal-aid system or de-  
3 scribed in subsection (c)(3)” after “any  
4 bridge”;

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

9 (E) in the first sentence of subsection (n),  
10 by inserting “for each of fiscal years 1991  
11 through 2009,” after “of law,”.

12 (6) NATIONAL DEFENSE HIGHWAYS.—Section  
13 311 of title 23, United States Code, is amended—

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

18 (B) by striking the second sentence.

19 (7) TOLLING.—

20 (A) IN GENERAL.—Notwithstanding title  
21 23, United States Code, or any other provision  
22 of law, as of October 1, 2009, there shall be no  
23 restriction on the ability of a State, as part of  
24 any highway improvement project, to impose  
25 and collect a toll on any highway in the State

1 that, as of that date, is part of the Interstate  
2 System.

3 (B) USE OF REVENUE FROM TOLLING.—A  
4 State may use revenue collected from a toll pur-  
5 suant to this paragraph only for a new highway  
6 infrastructure project in the State (including  
7 for a credit toward a non-Federal cost share re-  
8 quired for receipt of Federal funds for such a  
9 new highway infrastructure project).

10 (8) FEDERALIZATION AND DEFEDERALIZATION  
11 OF PROJECTS.—Notwithstanding any other provision  
12 of law, beginning on October 1, 2009—

13 (A) a highway construction or improve-  
14 ment project shall not be considered to be a  
15 Federal highway construction or improvement  
16 project unless and until a State expends Fed-  
17 eral funds for the construction portion of the  
18 project;

19 (B) a highway construction or improve-  
20 ment project shall not be considered to be a  
21 Federal highway construction or improvement  
22 project solely by reason of the expenditure of  
23 Federal funds by a State before the construc-  
24 tion phase of the project to pay expenses relat-  
25 ing to the project, including for any environ-

1           mental document or design work required for  
2           the project; and

3                   (C)(i) a State may, after having used Fed-  
4           eral funds to pay all or a portion of the costs  
5           of a highway construction or improvement  
6           project, reimburse the Federal Government in  
7           an amount equal to the amount of Federal  
8           funds so expended; and

9                   (ii) after completion of a reimbursement  
10          described in clause (i), a highway construction  
11          or improvement project described in that clause  
12          shall no longer be considered to be a Federal  
13          highway construction or improvement project.

14          (9) REPORTING REQUIREMENTS.—No reporting  
15          requirement, other than a reporting requirement in  
16          effect as of the date of enactment of this Act, shall  
17          apply on or after October 1, 2009, to the use of  
18          Federal funds for highway projects by a public-pri-  
19          vate partnership.

20          (b) EXPENDITURES FROM HIGHWAY TRUST  
21          FUND.—

22                  (1) EXPENDITURES FOR CORE PROGRAMS.—  
23          Section 9503(c) of the Internal Revenue Code of  
24          1986 (relating to expenditures from Highway Trust  
25          Fund) is amended—

1 (A) in paragraph (1), by striking “Safe,  
2 Accountable, Flexible, Efficient Transportation  
3 Equity Act: A Legacy for Users” and inserting  
4 “Transportation Empowerment Act”;

5 (B) in paragraph (1), by striking “2009”  
6 both places it appears and inserting “2014”;

7 (C) in paragraphs (2)(A)(i)(III), (2)(A)(ii),  
8 (4)(A)(i), (5)(A), and (6), by striking “October  
9 1, 2011” each place it appears and inserting  
10 “October 1, 2016”; and

11 (D) in paragraphs (2)(A)(i) and (3), by  
12 striking “July 1, 2012” each place it appears  
13 and inserting “July 1, 2017”.

14 (2) AMOUNTS AVAILABLE FOR CORE PROGRAM  
15 EXPENDITURES.—Section 9503 of such Code (relat-  
16 ing to the Highway Trust Fund) is amended by add-  
17 ing at the end the following:

18 “(g) CORE PROGRAMS FINANCING RATE.—For pur-  
19 poses of this section—

20 “(1) IN GENERAL.—Except as provided in para-  
21 graph (2)—

22 “(A) in the case of gasoline and special  
23 motor fuels the tax rate of which is the rate  
24 specified in section 4081(a)(2)(A)(i), the core  
25 programs financing rate is—

1           “(i) after September 30, 2009, and  
2 before October 1, 2010, 18.3 cents per gal-  
3 lon,

4           “(ii) after September 30, 2010, and  
5 before October 1, 2011, 9.6 cents per gal-  
6 lon,

7           “(iii) after September 30, 2011, and  
8 before October 1, 2012, 6.4 cents per gal-  
9 lon,

10          “(iv) after September 30, 2012, and  
11 before October 1, 2013, 5.0 cents per gal-  
12 lon, and

13          “(v) after September 30, 2013, 3.7  
14 cents per gallon, and

15          “(B) in the case of kerosene, diesel fuel,  
16 and special motor fuels the tax rate of which is  
17 the rate specified in section 4081(a)(2)(A)(iii),  
18 the core programs financing rate is—

19           “(i) after September 30, 2009, and  
20 before October 1, 2010, 24.3 cents per gal-  
21 lon,

22           “(ii) after September 30, 2010, and  
23 before October 1, 2011, 12.7 cents per gal-  
24 lon,



1 “(iii) after September 30, 2011, and  
2 before October 1, 2012, 8.5 cents per gal-  
3 lon,

4 “(iv) after September 30, 2012, and  
5 before October 1, 2013, 6.6 cents per gal-  
6 lon, and

7 “(v) after September 30, 2013, 5.0  
8 cents per gallon.

9 “(2) APPLICATION OF RATE.—In the case of  
10 fuels used as described in paragraph (4)(C), (5)(B),  
11 and (6) of subsection (c), the core programs financ-  
12 ing rate is zero.”.

13 (c) TERMINATION OF TRANSFERS TO MASS TRANSIT  
14 ACCOUNT.—

15 (1) IN GENERAL.—Section 9503(e)(2) of the  
16 Internal Revenue Code of 1986 (relating to Mass  
17 Transit Account) is amended by inserting “, and be-  
18 fore October 1, 2009” after “March 31, 1983”.

19 (2) AUTHORIZATION TO EXPEND REMAINING  
20 BALANCES IN ACCOUNT.—Section 9503(e)(3) of such  
21 Code is amended by striking “before October 1,  
22 2009”.

23 (d) EFFECTIVE DATE.—The amendments made by  
24 this section take effect on October 1, 2009.

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

2 (a) BALANCE OF CORE PROGRAMS FINANCING RATE  
 3 DEPOSITED IN FUND.—Section 9503 of the Internal Rev-  
 4 enue Code of 1986 (as amended by section 3(b)(2)) is  
 5 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 core programs financing rate for  
 25 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           2010 through 2013, \$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 2014 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 2004  
17 through 2009; over

18 “(bb) the distributions from  
19 the Highway Trust Fund to the  
20 State for such fiscal year attrib-  
21 utable to the core programs fi-  
22 nancing 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 2014 and any succeeding fis-  
4 cal year.

5 “(iv) DISTRIBUTION OF REMAINING  
6 AMOUNT.—If after September 30, 2013, 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, 2013, 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 2013, 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 2013.

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, 2009.

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 redesignating para-  
4 graph (7) (as added by section 11161(c)(1) of the Safe,  
5 Accountable, Flexible, Efficient Transportation Equity  
6 Act: A Legacy for Users) as paragraph (6) and by adding  
7 at the end the following:

8 “(7) RETURN OF EXCESS TAX RECEIPTS TO  
9 STATES FOR SURFACE TRANSPORTATION PUR-  
10 POSES.—

11 “(A) IN GENERAL.—On the first day of  
12 each of fiscal years 2010, 2011, 2012, and  
13 2013, the Secretary, in consultation with the  
14 Secretary of Transportation, shall—

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

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

21 “(aa) the Highway Trust  
22 Fund financing rate for such  
23 year, over

24 “(bb) the core programs fi-  
25 nancing rate for such year, over



1                   “(II) the amounts so appro-  
2                   priated which are equivalent to the  
3                   taxes described in paragraphs (4)(C),  
4                   (5)(B), and (6), and

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

11                  “(I) the percentage of that  
12                  amount allocated to each State, is  
13                  equal to

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

20                  “(B) ENFORCEMENT.—If the Secretary  
21                  determines that a State has used amounts  
22                  under subparagraph (A) for a purpose which is  
23                  not a surface transportation purpose as de-  
24                  scribed in subparagraph (A), the improperly  
25                  used amounts shall be deducted from any

1 amount the State would otherwise receive from  
2 the Highway Trust Fund for the fiscal year  
3 which begins after the date of the determina-  
4 tion.”.

5 (b) EFFECTIVE DATE.—The amendment made by  
6 this section takes effect on October 1, 2009.

7 **SEC. 6. INTERSTATE SURFACE TRANSPORTATION COM-**  
8 **PACTS.**

9 (a) DEFINITIONS.—In this section:

10 (1) INFRASTRUCTURE BANK.—The term “infra-  
11 structure bank” means a surface transportation in-  
12 frastructure bank established under an interstate  
13 compact under subsection (b)(5) and described in  
14 subsection (d).

15 (2) PARTICIPATING STATES.—The term “par-  
16 ticipating States” means the States that are parties  
17 to an interstate compact entered into under sub-  
18 section (b).

19 (3) SURFACE TRANSPORTATION.—The term  
20 “surface transportation” includes mass transit and  
21 rail.

22 (4) SURFACE TRANSPORTATION PROJECT.—The  
23 term “surface transportation project” means a sur-  
24 face transportation project, program, or activity de-  
25 scribed in subsection (b).

1 (b) CONSENT OF CONGRESS.—In order to increase  
2 public investment, attract needed private investment, and  
3 promote an intermodal transportation network, Congress  
4 grants consent to States to enter into interstate compacts  
5 to—

6 (1) promote the continuity, quality, and safety  
7 of the Interstate System;

8 (2) develop programs to promote and fund sur-  
9 face transportation safety initiatives and establish  
10 surface transportation safety standards for the par-  
11 ticipating States;

12 (3) conduct long-term planning for surface  
13 transportation infrastructure in the participating  
14 States;

15 (4) develop design and construction standards  
16 for infrastructure described in paragraph (3) to be  
17 used by the participating States; and

18 (5) establish surface transportation infrastruc-  
19 ture banks to promote regional or other multistate  
20 investment in infrastructure described in paragraph  
21 (3).

22 (c) FINANCING.—An interstate compact established  
23 by participating States under subsection (b) to carry out  
24 a surface transportation project may provide that, in order  
25 to carry out the compact, the participating States may—

1           (1) accept contributions from a unit of State or  
2 local government or a person;

3           (2) use any Federal or State funds made avail-  
4 able for that type of surface transportation project;

5           (3) on such terms and conditions as the partici-  
6 pating States consider advisable—

7                 (A) borrow money on a short-term basis  
8 and issue notes for the borrowing; and

9                 (B) issue bonds; and

10           (4) obtain financing by other means permitted  
11 under Federal or State law, including the use of tolls  
12 and surface transportation infrastructure banks  
13 under subsection (d).

14           (d) INFRASTRUCTURE BANKS.—

15                 (1) IN GENERAL.—An infrastructure bank  
16 may—

17                     (A) make loans;

18                     (B) under the joint or separate authority  
19 of the participating States with respect to the  
20 infrastructure bank, issue such debt as the in-  
21 frastructure bank and the participating States  
22 determine appropriate; and

23                     (C) provide other assistance to public or  
24 private entities constructing, or proposing to

1           construct or initiate, surface transportation  
2           projects.

3           (2) FORMS OF ASSISTANCE.—

4                   (A) IN GENERAL.—An infrastructure bank  
5           may make a loan or provide other assistance  
6           described in subparagraph (C) to a public or  
7           private entity in an amount equal to all or part  
8           of the construction cost, capital cost, or initi-  
9           ation cost of a surface transportation project.

10                   (B) SUBORDINATION OF ASSISTANCE.—

11           The amount of any loan or other assistance de-  
12           scribed in subparagraph (C) that is received for  
13           a surface transportation project under this sec-  
14           tion may be subordinated to any other debt fi-  
15           nancing for the surface transportation project.

16                   (C) OTHER ASSISTANCE.—Other assist-

17           ance referred to in subparagraphs (A) and (B)  
18           includes any use of funds for the purpose of—

19                   (i) credit enhancement;

20                   (ii) a capital reserve for bond or debt  
21           instrument financing;

22                   (iii) bond or debt instrument financ-  
23           ing issuance costs;

24                   (iv) bond or debt issuance financing  
25           insurance;

- 1 (v) subsidization of interest rates;  
2 (vi) letters of credit;  
3 (vii) any credit instrument;  
4 (viii) bond or debt financing instru-  
5 ment security; and  
6 (ix) any other form of debt financing  
7 that relates to the qualifying surface trans-  
8 portation project.

9 (3) NO OBLIGATION OF UNITED STATES.—

10 (A) IN GENERAL.—The establishment  
11 under this section of an infrastructure bank  
12 does not constitute a commitment, guarantee,  
13 or obligation on the part of the United States  
14 to any third party with respect to any security  
15 or debt financing instrument issued by the  
16 bank. No third party shall have any right  
17 against the United States for payment solely by  
18 reason of the establishment.

19 (B) STATEMENT ON INSTRUMENT.—Any  
20 security or debt financing instrument issued by  
21 an infrastructure bank shall expressly state that  
22 the security or instrument does not constitute a  
23 commitment, guarantee, or obligation of the  
24 United States.

1 (e) EFFECTIVE DATE.—This section takes effect on  
2 October 1, 2009.

3 **SEC. 7. REDUCTION IN TAXES ON GASOLINE, DIESEL FUEL,**  
4 **KEROSENE, AND SPECIAL FUELS FUNDING**  
5 **HIGHWAY TRUST FUND.**

6 (a) REDUCTION IN TAX RATE.—

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

10 (A) in clause (i), by striking “18.3 cents”  
11 and inserting “3.7 cents”; and

12 (B) in clause (iii), by striking “24.3 cents”  
13 and inserting “5.0 cents”.

14 (2) CONFORMING AMENDMENTS.—

15 (A) Section 4081(a)(2)(D) of such Code is  
16 amended—

17 (i) by striking “19.7 cents” and in-  
18 sserting “4.1 cents”, and

19 (ii) by striking “24.3 cents” and in-  
20 sserting “5.0 cents”.

21 (B) Section 6427(b)(2)(A) of such Code is  
22 amended by striking “7.4 cents” and inserting  
23 “1.5 cents”.

24 (b) ADDITIONAL CONFORMING AMENDMENTS.—

1           (1) Section 4041(a)(1)(C)(iii)(I) of the Internal  
2 Revenue Code of 1986 is amended by striking “7.3  
3 cents per gallon (4.3 cents per gallon after Sep-  
4 tember 30, 2011)” and inserting “1.4 cents per gal-  
5 lon (zero after September 30, 2016)”.

6           (2) Section 4041(a)(2)(B)(ii) of such Code is  
7 amended by striking “24.3 cents” and inserting “5.0  
8 cents”.

9           (3) Section 4041(a)(3)(A) of such Code is  
10 amended by striking “18.3 cents” and inserting “3.7  
11 cents”.

12           (4) Section 4041(m)(1) of such Code is amend-  
13 ed—

14                 (A) in subparagraph (A), by striking  
15 “2011” and inserting “2016,”;

16                 (B) in subparagraph (A)(i), by striking  
17 “9.15 cents” and inserting “1.8 cents”;

18                 (C) in subparagraph (A)(ii), by striking  
19 “11.3 cents” and inserting “2.3 cents”; and

20                 (D) by striking subparagraph (B) and in-  
21 serting the following:

22                         “(B) zero after September 30, 2016.”.

23           (5) Section 4081(d)(1) of such Code is amend-  
24 ed by striking “4.3 cents per gallon after September



1 30, 2011” and inserting “zero after September 30,  
2 2016”.

3 (6) Section 9503(b) of such Code is amended—

4 (A) in paragraphs (1) and (2), by striking  
5 “October 1, 2011” both places it appears and  
6 inserting “October 1, 2016”;

7 (B) in the heading of paragraph (2), by  
8 striking “OCTOBER 1, 2011” and inserting “OC-  
9 TOBER 1, 2016”;

10 (C) in paragraph (2), by striking “after  
11 September 30, 2011, and before July 1, 2012”  
12 and inserting “after September 30, 2016, and  
13 before July 1, 2017”; and

14 (D) in paragraph (6)(B), by striking  
15 “2009” both places it appears and inserting  
16 “2014”.

17 (c) FLOOR STOCK REFUNDS.—

18 (1) IN GENERAL.—If—

19 (A) before October 1, 2013, tax has been  
20 imposed under section 4081 of the Internal  
21 Revenue Code of 1986 on any liquid; and

22 (B) on such date such liquid is held by a  
23 dealer and has not been used and is intended  
24 for sale;

1 there shall be credited or refunded (without interest)  
2 to the person who paid such tax (in this subsection  
3 referred to as the “taxpayer”) an amount equal to  
4 the excess of the tax paid by the taxpayer over the  
5 amount of such tax which would be imposed on such  
6 liquid had the taxable event occurred on such date.

7 (2) TIME FOR FILING CLAIMS.—No credit or re-  
8 fund shall be allowed or made under this subsection  
9 unless—

10 (A) claim therefor is filed with the Sec-  
11 retary of the Treasury before April 1, 2014;  
12 and

13 (B) in any case where liquid is held by a  
14 dealer (other than the taxpayer) on October 1,  
15 2013—

16 (i) the dealer submits a request for re-  
17 fund or credit to the taxpayer before Janu-  
18 ary 1, 2014; and

19 (ii) the taxpayer has repaid or agreed  
20 to repay the amount so claimed to such  
21 dealer or has obtained the written consent  
22 of such dealer to the allowance of the cred-  
23 it or the making of the refund.

24 (3) EXCEPTION FOR FUEL HELD IN RETAIL  
25 STOCKS.—No credit or refund shall be allowed under

1 this subsection with respect to any liquid in retail  
2 stocks held at the place where intended to be sold  
3 at retail.

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

9 (5) CERTAIN RULES TO APPLY.—Rules similar  
10 to the rules of subsections (b) and (c) of section  
11 6412 and sections 6206 and 6675 of such Code shall  
12 apply for purposes of this subsection.

13 (d) EFFECTIVE DATE.—The amendments made by  
14 this section shall apply to fuel removed after September  
15 30, 2013.

16 **SEC. 8. REVENUE ALIGNED BUDGET AUTHORITY.**

17 Section 110(a) of title 23, United States Code, is  
18 amended by striking paragraph (1) and inserting the fol-  
19 lowing:

20 “(1) ALLOCATION.—If the amount determined  
21 under section 251(b)(1)(B)(ii)(I)(cc) of the Balanced  
22 Budget and Emergency Deficit Control Act of 1985  
23 (2 U.S.C. 901(b)(2)(B)(ii)(I)(cc)) for fiscal year  
24 2009 or any fiscal year thereafter is greater than  
25 zero, the Secretary, on October 1 of the following

1 fiscal year, shall allocate for that following fiscal  
2 year an amount of funds equal to the amount deter-  
3 mined under that section.”.

4 **SEC. 9. REPORT TO CONGRESS.**

5 Not later than 180 days after the date of enactment  
6 of this Act, after consultation with the appropriate com-  
7 mittees of Congress, the Secretary of Transportation shall  
8 submit a report to Congress describing such technical and  
9 conforming amendments to titles 23 and 49, United States  
10 Code, and such technical and conforming amendments to  
11 other laws, as are necessary to bring those titles and other  
12 laws into conformity with the policy embodied in this Act  
13 and the amendments made by this Act.

14 **SEC. 10. EFFECTIVE DATE CONTINGENT UPON CERTIFI-**  
15 **CATION OF DEFICIT NEUTRALITY.**

16 (a) PURPOSE.—The purpose of this section is to en-  
17 sure that—

18 (1) this Act will become effective only if the Di-  
19 rector of the Office of Management and Budget cer-  
20 tifies that this Act is deficit neutral;

21 (2) discretionary spending limits are reduced to  
22 capture the savings realized in devolving transpor-  
23 tation functions to the State level pursuant to this  
24 Act; and

1           (3) the tax reduction made by this Act is not  
2           scored under pay-as-you-go and does not inadvert-  
3           ently trigger a sequestration.

4           (b) EFFECTIVE DATE CONTINGENCY.—Notwith-  
5           standing any other provision of this Act, this Act and the  
6           amendments made by this Act shall take effect only if—

7           (1) the Director of the Office of Management  
8           and Budget (referred to in this section as the “Di-  
9           rector”) submits the report as required in subsection  
10          (c); and

11          (2) the report contains a certification by the Di-  
12          rector that, based on the required estimates, the re-  
13          duction in discretionary outlays resulting from the  
14          reduction in contract authority is at least as great  
15          as the reduction in revenues for each fiscal year  
16          through fiscal year 2014.

17          (c) OMB ESTIMATES AND REPORT.—

18          (1) REQUIREMENTS.—Not later than 5 cal-  
19          endar days after the date of enactment of this Act,  
20          the Director shall—

21                  (A) estimate the net change in revenues re-  
22                  sulting from this Act for each fiscal year  
23                  through fiscal year 2014;

24                  (B) estimate the net change in discre-  
25                  tionary outlays resulting from the reduction in

1 contract authority under this Act for each fiscal  
2 year through fiscal year 2014;

3 (C) determine, based on those estimates,  
4 whether the reduction in discretionary outlays  
5 is at least as great as the reduction in revenues  
6 for each fiscal year through fiscal year 2014;  
7 and

8 (D) submit to Congress a report setting  
9 forth the estimates and determination.

10 (2) APPLICABLE ASSUMPTIONS AND GUIDE-  
11 LINES.—

12 (A) REVENUE ESTIMATES.—The revenue  
13 estimates required under paragraph (1)(A)  
14 shall be predicated on the same economic and  
15 technical assumptions and scorekeeping guide-  
16 lines that would be used for estimates made  
17 pursuant to section 252(d) of the Balanced  
18 Budget and Emergency Deficit Control Act of  
19 1985 (2 U.S.C. 902(d)).

20 (B) OUTLAY ESTIMATES.—The outlay esti-  
21 mates required under paragraph (1)(B) shall be  
22 determined by comparing the level of discre-  
23 tionary outlays resulting from this Act with the  
24 corresponding level of discretionary outlays pro-  
25 jected in the baseline under section 257 of the

1           Balanced Budget and Emergency Deficit Con-  
2           trol Act of 1985 (2 U.S.C. 907).

3           (d) CONFORMING ADJUSTMENT TO DISCRETIONARY  
4 SPENDING LIMITS.—Upon compliance with the require-  
5 ments specified in subsection (b), the Director shall adjust  
6 the adjusted discretionary spending limits for each fiscal  
7 year through fiscal year 2009 under section 601(a)(2) of  
8 the Congressional Budget Act of 1974 (2 U.S.C.  
9 665(a)(2)) by the estimated reductions in discretionary  
10 outlays under subsection (c)(1)(B).

11          (e) PAYGO INTERACTION.—Upon compliance with the  
12 requirements specified in subsection (b), no changes in  
13 revenues estimated to result from the enactment of this  
14 Act shall be counted for the purposes of section 252(d)  
15 of the Balanced Budget and Emergency Deficit Control  
16 Act of 1985 (2 U.S.C. 902(d)).

○