

AMERICAN ENERGY AND INFRASTRUCTURE JOBS
FINANCING ACT OF 2012

FEBRUARY 9, 2012.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. CAMP, from the Committee on Ways and Means,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 3864]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 3864) to amend the Internal Revenue Code of 1986 to extend authorities relating to the Highway Trust Fund, to provide revenues for highway programs and for other purposes, having considered the same, report favorably thereon and recommend that the bill do pass.

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I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

The bill, H.R. 3864, reported by the Committee on Ways and Means, reauthorizes through September 30, 2016, the expenditure authority for the Highway Trust Fund and extends, through September 30, 2018, the current Federal excise taxes that fund the Highway Trust Fund. To address the projected inability of the Highway Trust Fund to meet expenditures with current revenue sources, H.R. 3864 restructures the funding sources for the Highway Account and Mass Transit Account. Under H.R. 3864, all excise tax revenue that fund the Highway Trust Fund and certain revenues from domestic energy development are deposited into the Highway Account. The Mass Transit Account is renamed the Alternative Transportation Account and funded with an appropriation of \$40 billion.

B. BACKGROUND AND NEED FOR LEGISLATION

The provisions approved by the Committee reflect the need to reauthorize expiring Highway Trust Fund expenditure authority, extend expiring Federal excise taxes that fund the Highway Trust Fund and provide revenues to the Highway Trust Fund in order to provide stable funding for highway and mass transit projects, consistent with the five-year reauthorization bill (the “American Energy and Infrastructure Jobs Act of 2012”, H.R. 7) that was ordered reported by the Committee on Transportation and Infrastructure on February 3, 2012, as well as for other purposes.

C. LEGISLATIVE HISTORY

Background

H.R. 3864 was introduced on February 1, 2012, and was referred to the Committee on Ways and Means, and in addition the Committee on Transportation and Infrastructure.

Committee action

The Committee on Ways and Means marked up H.R. 3864, the American Energy and Infrastructure Jobs Financing Act of 2012, on February 3, 2012, and ordered the bill favorably reported without an amendment (with a quorum being present).

II. EXPLANATION OF THE BILL

A. EXTENSION OF HIGHWAY TRUST FUND EXPENDITURE AUTHORITY AND RELATED TAXES (SECS. 2 AND 3 OF THE BILL AND SECS. 4041, 4051, 4071, 4081, 4221, 4481–4483, 6412, 9503, 9504, AND 9508 OF THE CODE)

Present-Law Highway Trust Fund Excise Taxes

In general

Six separate excise taxes are imposed to finance the Federal Highway Trust Fund program. Three of these taxes are imposed on highway motor fuels. The remaining three are a retail sales tax on heavy highway vehicles, a manufacturers’ excise tax on heavy vehicle tires, and an annual use tax on heavy vehicles. A substantial majority of the revenues produced by the Highway Trust Fund ex-

cise taxes are derived from the taxes on motor fuels. The annual use tax on heavy vehicles expires October 1, 2012. Except for 4.3 cents per gallon of the Highway Trust Fund fuels tax rates, the remaining taxes are scheduled to expire after March 31, 2012. The 4.3-cents-per-gallon portion of the fuels tax rates is permanent.¹ The six taxes are summarized below.

Highway motor fuels taxes

The Highway Trust Fund motor fuels tax rates are as follows:²

Gasoline	18.3 cents per gallon.
Diesel fuel and kerosene	24.3 cents per gallon.
Special motor fuels	³ 18.3 cents per gallon generally.

Non-fuel Highway Trust Fund excise taxes

In addition to the highway motor fuels excise tax revenues, the Highway Trust Fund receives revenues produced by three excise taxes imposed exclusively on heavy highway vehicles or tires. These taxes are:

1. A 12-percent excise tax imposed on the first retail sale of heavy highway vehicles, tractors, and trailers (generally, trucks having a gross vehicle weight in excess of 33,000 pounds and trailers having such a weight in excess of 26,000 pounds);⁴
2. An excise tax imposed on highway tires with a rated load capacity exceeding 3,500 pounds, generally at a rate of 0.945 cents per pound of excess;⁵ and
3. An annual use tax imposed on highway vehicles having a taxable gross weight of 55,000 pounds or more.⁶ (The maximum rate for this tax is \$550 per year, imposed on vehicles having a taxable gross weight over 75,000 pounds.)

The taxable year for the annual use tax is from July 1st through June 30th of the following year. For the period July 1, 2012, through September 30, 2012, the amount of the annual use tax is reduced by 75 percent.

Present-Law Highway Trust Fund Expenditure Provisions

In general

Under present law, revenues from the highway excise taxes, as imposed through March 31, 2012, generally are dedicated to the Highway Trust Fund. Dedication of excise tax revenues to the Highway Trust Fund and expenditures from the Highway Trust Fund are governed by the Code.⁷ The Code authorizes expenditures (subject to appropriations) from the Highway Trust Fund through March 31, 2012, for the purposes provided in authorizing legisla-

¹This portion of the tax rates was enacted as a deficit reduction measure in 1993. Receipts from it were retained in the General Fund until 1997 legislation provided for their transfer to the Highway Trust Fund.

²Secs. 4041(a)(2), 4041(a)(3), 4041(m), 4081(a)(2)(A)(i), and 4081(a)(2)(A)(iii). Except where noted, all section references are to the Internal Revenue Code of 1986, as amended ("the Code"). Some of these fuels also are subject to an additional 0.1-cent-per-gallon excise tax to fund the Leaking Underground Storage Tank ("LUST") Trust Fund (secs. 4041(d) and 4081(a)(2)(B)).

³See secs. 4041(a)(2), 4041(a)(3), and 4041(m).

⁴Sec. 4051.

⁵Sec. 4071.

⁶Sec. 4481.

⁷Sec. 9503. The Highway Trust Fund statutory provisions were placed in the Internal Revenue Code in 1982.

tion, as in effect on the date of enactment of the Surface Transportation Extension Act of 2011, Part II.

Highway Trust Fund expenditure purposes

The Highway Trust Fund has a separate account for mass transit, the Mass Transit Account.⁸ The Highway Trust Fund and the Mass Transit Account are funding sources for specific programs.

Highway Trust Fund expenditure purposes have been revised with each authorization Act enacted since establishment of the Highway Trust Fund in 1956. In general, expenditures authorized under those Acts (as the Acts were in effect on the date of enactment of the most recent such authorizing Act) are specified by the Code as Highway Trust Fund expenditure purposes.⁹ The Code provides that the authority to make expenditures from the Highway Trust Fund expires after March 31, 2012. Thus, no Highway Trust Fund expenditures may occur after March 31, 2012, without an amendment to the Code.

The American Energy and Infrastructure Jobs Act of 2012

On February 3, 2012, the House Committee on Transportation and Infrastructure approved H.R. 7, the American Energy and Infrastructure Jobs Act of 2012. Among other purposes, the bill reauthorizes the Federal highway, public transportation, highway safety, and motor carrier safety programs for fiscal year 2012 through fiscal year 2016.

Reasons for Change

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, which was the last long-term Highway Trust Fund reauthorization, expired September 30, 2009. The highway and mass transit programs since then have been subject to a series of temporary extensions. Most highway projects are multi-year projects. The Committee believes a five-year reauthorization provides stability for State transportation programs and the opportunity for longer-range planning. Therefore, it is appropriate to reauthorize Highway Trust Fund expenditures through September 30, 2016, in coordination with new transportation legislation (the American Energy and Infrastructure Jobs Act of 2012) and to extend current Federal taxes payable to the Highway Trust Fund through September 30, 2018.

In calendar year 2011, the heavy vehicle use tax was scheduled to expire on September 30, 2011, with a short July 1 to September 30 tax period. The annual use tax return is normally due August 31. On July 15, 2011, the IRS administratively delayed the due date for filing the annual heavy vehicle use tax return from August

⁸Sec. 9503(e)(1).

⁹The authorizing Acts that currently are referenced in the Highway Trust Fund provisions of the Code are: the Highway Revenue Act of 1956; Titles I and II of the Surface Transportation Assistance Act of 1982; the Surface Transportation and Uniform Relocation Act of 1987; the Intermodal Surface Transportation Efficiency Act of 1991; the Transportation Equity Act for the 21st Century; the Surface Transportation Extension Act of 2003; the Surface Transportation Extension Act of 2004; the Surface Transportation Extension Act of 2004, Part II; the Surface Transportation Extension Act of 2004, Part III; the Surface Transportation Extension Act of 2004, Part IV; the Surface Transportation Extension Act of 2004, Part V; the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users; the SAFETEA-LU Technical Corrections Act of 2008; the Surface Transportation Extension Act of 2010; the Surface Transportation Extension Act of 2010, Part II; the Surface Transportation Extension Act of 2011; and the Surface Transportation Extension Act of 2011, Part II.

31, to November 30, 2011. This allowed sufficient time for Congress to extend the heavy vehicle use tax for an entire taxable year, ensuring the Highway Trust Fund would receive the full amount of tax rather than 25 percent for the taxable period.

To ensure a full year of tax is collected, and avoid taxpayer and IRS inconvenience in the future, the bill eliminates the short taxable period, changes the heavy vehicle use tax taxable period from a July 1 to an October 1 annual period, and conforms the heavy vehicle use tax expiration to that of the other taxes dedicated to the Highway Trust Fund.

Explanation of Provision

Under H.R. 3864, the expenditure authority for the Highway Trust Fund is extended through September 30, 2016. The Code provisions governing the purposes for which monies in the Highway Trust Fund may be spent are updated to include the reauthorization bill, the American Energy and Infrastructure Jobs Act of 2012.¹⁰

The provision extends the motor fuel taxes, and all three non-fuel excise taxes at their current rates through September 30, 2018. Effective October 1, 2012, the provision conforms the annual use tax to a fiscal year, ending on September 30, rather than June 30.¹¹

Effective Date

The provision is generally effective on April 1, 2012. The provision changing the taxable period for the annual use tax is effective for periods beginning after September 30, 2012.

B. REVENUES FROM CERTAIN DOMESTIC ENERGY LEASES APPROPRIATED TO THE HIGHWAY TRUST FUND (SEC. 4 OF THE BILL AND SEC. 9503 OF THE CODE)

Present Law

Section 9503 appropriates to the Highway Trust Fund amounts equivalent to the taxes received from the following: the taxes on diesel, gasoline, kerosene and special motor fuel, the tax on tires, the annual heavy vehicle use tax, and the tax on the retail sale of heavy trucks and trailers.¹² Section 9601 provides that amounts appropriated to a trust fund pursuant to sections 9501 through 9511, are to be transferred at least monthly from the General Fund of the Treasury to such trust fund on the basis of estimates made by the Secretary of the Treasury of the amounts referred to in the Code section appropriating the amounts to such trust fund. The Code requires that proper adjustments be made in amounts subsequently transferred to the extent prior estimates were in excess of, or less than, the amounts required to be transferred.

Reasons for Change

Because infrastructure spending has consistently outpaced Highway Trust Fund revenues, the Congress has made several deficit-

¹⁰The provision also replaces cross-references to the Surface Transportation Extension Act of 2011, Part II, with the American Energy and Infrastructure Jobs Act of 2012, and replaces April 1, 2012 references with October 1, 2016 in the Code provisions governing the Leaking Underground Storage Tank Trust Fund, and the Sport Fish Restoration and Boating Trust Fund.

¹¹The LUST Trust Fund financing rate of 0.1 cent per gallon is also extended through September 30, 2018.

¹²Sec. 9503(b)(1).

financed General Fund transfers to support Highway Trust Fund expenditures in recent years. Nevertheless, the Congressional Budget Office has estimated that the Highway Trust Fund will exhaust its available revenues for highway projects in Fiscal Year 2013. The Committee believes it is necessary to prevent insolvency of the Highway Trust Fund while providing adequate funding for these projects. Therefore, the Committee believes that it is appropriate to dedicate revenues from domestic energy resources to the Highway Trust Fund, which will simultaneously provide needed funding for infrastructure in a fiscally responsible manner, promote domestic energy development, and create jobs.

Explanation of Provision

H.R. 3864 provides that the net increase in Federal revenues from certain onshore and offshore domestic energy leasing and production, as generated by certain bills,¹³ be appropriated to the Highway Trust Fund.

Effective Date

The provision is effective on the date of enactment.

C. MASS TRANSIT ACCOUNT FUNDING (SEC. 5 OF THE BILL AND SEC. 9503 OF THE CODE)

Present Law

The Mass Transit Account is funded by a portion of the motor fuel taxes as follows: 2.86 cents per gallon of the taxes imposed on gasoline, diesel fuel, and kerosene; 1.43 cents per gallon in the case of any partially exempt methanol or ethanol fuel; 1.86 cents per gallon in the case of liquefied natural gas; 2.13 cents per gallon in the case of liquefied petroleum gas; and 9.71 cents per MCF (thousand cubic feet) in the case of compressed natural gas.

Reasons for Change

Fuel tax revenues are insufficient to meet the needs of the Highway Trust Fund, which has necessitated several deficit-financed General Fund transfers to the Highway Trust Fund in recent years. The Congressional Budget Office projects that the Mass Transit Account of the Highway Trust Fund will exhaust available revenues for mass transit projects in Fiscal Year 2014. In addition, mass transit generally contributes no revenue to the Highway Trust Fund, even though approximately 20 percent of Highway Trust Fund revenues is spent on mass transit projects. To provide a more appropriate funding source for mass transit during the re-authorization period, the Committee believes that current fuel tax revenues should be devoted exclusively to highway projects, while

¹³H.R. 3407, the Alaskan Energy for American Jobs Act, is a bill to direct the Secretary of the Interior to establish and implement a competitive oil and gas leasing program for the exploration, development, and production of the oil and gas resources of the Coastal Plain of Alaska, to ensure secure energy supplies for the continental Pacific Coast of the United States, to lower prices, to reduce imports, and for other purposes. H.R. 3408, the Protecting Investment in Oil Shale the Next Generation of Environmental, Energy, and Resource Security Act (the PIONEERS Act), is a bill to set clear rules for the development of the United States oil shale resources, to promote shale technology research and development, and for other purposes. H.R. 3410, the Energy Security and Transportation Jobs Act, is a bill to require the Secretary of the Interior to conduct certain offshore oil and gas lease sales, to provide fair and equitable revenue sharing for all coastal States, to formulate future offshore energy development plans in areas with the most potential, to generate revenue for American infrastructure, and for other purposes.

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Berg	X	.....	.....	.....	.....	.....	.....
Ms. Black	X	.....	.....	.....	.....	.....	.....
Mr. Reed	X	.....	.....	.....	.....	.....	.....

VOTES ON AMENDMENTS

An amendment offered by Mr. Blumenauer and Mr. Rangel to strike section 5 of the bill failed to pass by a roll call vote of 15 yeas to 22 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Camp	X	.....	Mr. Levin	X	.....	.....
Mr. Herger	X	.....	Mr. Rangel	X	.....	.....
Mr. Johnson	X	.....	Mr. Stark	X	.....	.....
Mr. Brady	X	.....	Mr. McDermott	X	.....	.....
Mr. Ryan	X	.....	Mr. Lewis	X	.....	.....
Mr. Nunes	X	.....	Mr. Neal	X	.....	.....
Mr. Tiberi	X	.....	Mr. Becerra	X	.....	.....
Mr. Davis	X	.....	Mr. Doggett	X	.....	.....
Mr. Reichert	X	.....	Mr. Thompson	X	.....	.....
Mr. Boustany	X	.....	Mr. Larson	X	.....	.....
Mr. Roskam	X	.....	Mr. Blumenauer	X	.....	.....
Mr. Gerlach	X	.....	Mr. Kind	X	.....	.....
Mr. Price	X	.....	Mr. Pascrell	X	.....	.....
Mr. Buchanan	X	.....	Ms. Berkley	X	.....	.....
Mr. Smith	X	.....	Mr. Crowley	X	.....	.....
Mr. Schock	X	.....	.....	.....	.....	.....
Ms. Jenkins	X	.....	.....	.....	.....	.....
Mr. Paulsen	X	.....	.....	.....	.....	.....
Mr. Marchant	X	.....	.....	.....	.....	.....
Mr. Berg	X	.....	.....	.....	.....	.....
Ms. Black	X	.....	.....	.....	.....	.....
Mr. Reed	X	.....	.....	.....	.....	.....

An amendment offered by Mr. Neal to strike section 5 of the bill and insert various other tax provisions failed to pass by a roll call vote of 15 yeas to 22 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Camp	X	.....	Mr. Levin	X	.....	.....
Mr. Herger	X	.....	Mr. Rangel	X	.....	.....
Mr. Johnson	X	.....	Mr. Stark	X	.....	.....
Mr. Brady	X	.....	Mr. McDermott	X	.....	.....
Mr. Ryan	X	.....	Mr. Lewis	X	.....	.....
Mr. Nunes	X	.....	Mr. Neal	X	.....	.....
Mr. Tiberi	X	.....	Mr. Becerra	X	.....	.....
Mr. Davis	X	.....	Mr. Doggett	X	.....	.....
Mr. Reichert	X	.....	Mr. Thompson	X	.....	.....
Mr. Boustany	X	.....	Mr. Larson	X	.....	.....
Mr. Roskam	X	.....	Mr. Blumenauer	X	.....	.....
Mr. Gerlach	X	.....	Mr. Kind	X	.....	.....
Mr. Price	X	.....	Mr. Pascrell	X	.....	.....
Mr. Buchanan	X	.....	Ms. Berkley	X	.....	.....
Mr. Smith	X	.....	Mr. Crowley	X	.....	.....
Mr. Schock	X	.....	.....	.....	.....	.....
Ms. Jenkins	X	.....	.....	.....	.....	.....
Mr. Paulsen	X	.....	.....	.....	.....	.....
Mr. Marchant	X	.....	.....	.....	.....	.....
Mr. Berg	X	.....	.....	.....	.....	.....
Ms. Black	X	.....	.....	.....	.....	.....
Mr. Reed	X	.....	.....	.....	.....	.....

IV. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the revenue provisions of the bill, H.R. 3864, as reported.

The bill is estimated to have the following effects on Federal budget receipts for fiscal years 2012–2022:

**ESTIMATED REVENUE EFFECTS OF THE REVENUE PROVISIONS CONTAINED IN H.R. 3864,
THE "AMERICAN ENERGY AND INFRASTRUCTURE JOBS FINANCING ACT OF 2012,"
AS REPORTED BY THE COMMITTEE ON WAYS AND MEANS**

Fiscal Years 2012 - 2022

[Millions of Dollars]

Provision	Effective	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2012-17	2012-22
A. Extension of Highway Trust Fund Expenditure Authority (sunset 9/30/16).....	4/1/12													
B. Extension of Highway-Related Taxes (sunset 9/30/18).....	4/1/2012 [1]													
C. Revenues From Certain Domestic Energy Leases Appropriated to the Highway Trust Fund.....	DOE													
D. Alternative Transportation Account.....	DOE													
NET TOTAL														

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding. Date of enactment is assumed to be April 1, 2012.

Legend for "Effective" column: DOE = date of enactment

[1] The proposal changing the taxable period for the annual use tax is effective for periods beginning after September 30, 2012.

B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX
EXPENDITURES BUDGET AUTHORITY

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. The Committee states further that the bill involves no new or increased tax expenditures.

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 7, 2012.

Hon. DAVE CAMP,
*Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3864, the American Energy and Infrastructure Jobs Financing Act of 2012.

If you wish further details on this estimate, we will be pleased to provide them. The staff contacts are Kalyani Parthasarathy and Sarah Puro.

Sincerely,

DOUGLAS W. ELMENDORF,
Director.

Enclosure.

*H.R. 3864—American Energy and Infrastructure Jobs Financing
Act of 2012*

H.R. 3864 would extend through fiscal year 2018 the existing taxes that are dedicated to the Highway Trust Fund, and would extend through fiscal year 2016 the authority to expend amounts credited to that fund. Most recently, the Surface and Air Transportation Programs Extension Act of 2011 (Public Law 112–30), extended the highway taxes and spending authority through March 31, 2012. In addition, H.R. 3864 would transfer amounts from the general fund into the Mass Transit Account of the Highway Trust Fund (which would be subsequently renamed the Alternative Transportation Account), and revenues previously credited to the Mass Transit Account would be transferred to the Highway Account of the Highway Trust Fund.

Pursuant to rules in the Balanced Budget and Emergency Deficit Control Act for constructing the baseline, certain expiring provisions of law—such as those that govern excise taxes credited to the Highway Trust Fund—are assumed to continue beyond their scheduled expiration date for budget projection purposes. H.R. 3864 would continue highway-related taxes at levels that are consistent with those projected in CBO’s baseline over the 2012–2018 period (net revenues accruing to the highway trust fund amount to \$37 billion in 2013, and rise to \$41 billion in 2018). In addition, the transfer of money from the general fund to the Highway Trust Fund and the transfer within accounts of that fund would not af-

fect the total amount of revenue collected. As a result, CBO and the staff of the Joint Committee on Taxation (JCT) estimate that enacting the bill would not affect revenues. Further, the bill would not affect direct spending, CBO estimates; therefore, pay-as-you-go procedures do not apply.

Although H.R. 3864 would extend the authority to expend amounts from the Highway Trust Fund, CBO expects that the contract authority (a mandatory form of budget authority) for programs funded through the Highway Trust Fund will continue to be provided in multi-year authorizations for surface transportation programs. Further, CBO expects that limitations on the obligations of those amounts will continue to be provided in future appropriation acts. As a result, CBO estimates that enacting H.R. 3864 would not affect spending subject to appropriation.

JCT has reviewed the tax provisions of H.R. 3864 and determined that they contain no intergovernmental or private-sector mandates as defined by the Unfunded Mandates Reform Act (UMRA). CBO has reviewed the nontax provisions of H.R. 3864 and determined that they also do not contain intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

The CBO staff contacts for this estimate are Kalyani Parthasarathy and Sarah Puro. The estimate was approved by Frank Sammartino, Assistant Director for Tax Analysis, and Theresa Gullo, Deputy Assistant Director for Budget Analysis.

D. MACROECONOMIC IMPACT ANALYSIS

In compliance with clause 3(h)(2) of rule XIII of the Rules of the House of Representatives, the following statement is made by the Joint Committee on Taxation with respect to the provisions of the bill amending the Internal Revenue Code of 1986: the effects of the bill on economic activity are so small as to be incalculable within the context of a model of the aggregate economy.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was as a result of the Committee's review of the provisions of H.R. 3864 that the Committee concluded that it is appropriate to report the bill favorably to the House of Representatives with the recommendation that the bill do pass.

B. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

C. INFORMATION RELATING TO UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104-4).

The Committee has determined that the reported bill does not contain any Federal private sector mandates within the meaning of Public Law No. 104-4, the Unfunded Mandates Reform Act of 1995. The costs required to comply with each Federal private sector mandate generally are no greater than the aggregate estimated budget effects of the provision.

The Committee has determined that the revenue provisions of the bill do not impose a Federal intergovernmental mandate on State, local, or tribal governments.

D. APPLICABILITY OF HOUSE RULE XXI 5(b)

Clause 5(b) of rule XXI of the Rules of the House of Representatives provides, in part, that “A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present.” The Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not involve any Federal income tax rate increases within the meaning of the rule.

E. TAX COMPLEXITY ANALYSIS

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the “IRS Reform Act”) requires the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Department of the Treasury) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses.

Pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives, the staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Code and that have “widespread applicability” to individuals or small businesses within the meaning of that section.

F. CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill as reported contain no congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of that rule.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1986

* * * * *

Subtitle D—Miscellaneous Excise Taxes

* * * * *

CHAPTER 31—RETAIL EXCISE TAXES

* * * * *

Subchapter B—Special Fuels

SEC. 4041. IMPOSITION OF TAX.

(a) DIESEL FUEL AND SPECIAL MOTOR FUELS.—

(1) TAX ON DIESEL FUEL AND KEROSENE IN CERTAIN CASES.—

(A) * * *

* * * * *

(C) RATE OF TAX.—

(i) * * *

* * * * *

(iii) RATE OF TAX ON CERTAIN BUSES.—

(I) IN GENERAL.—Except as provided in subclause (II), in the case of fuel sold for use or used in a use described in section 6427(b)(1) (after the application of section 6427(b)(3)), the rate of tax imposed by this paragraph shall be 7.3 cents per gallon (4.3 cents per gallon after **[March 31, 2012]** *September 30, 2018*).

* * * * *

(m) CERTAIN ALCOHOL FUELS.—

(1) IN GENERAL.—In the case of the sale or use of any partially exempt methanol or ethanol fuel the rate of the tax imposed by subsection (a)(2) shall be—

(A) after September 30, 1997, and before **[April 1, 2012]** *October 1, 2018*—

(i) * * *

* * * * *

(B) after **[March 31, 2012]** *September 30, 2018*—

(i) * * *

* * * * *

Subchapter C—Heavy Trucks and Trailers

SEC. 4051. IMPOSITION OF TAX ON HEAVY TRUCKS AND TRAILERS SOLD AT RETAIL.

(a) * * *
* * * * *

(c) TERMINATION.—On and after [April 1, 2012] *October 1, 2018*, the taxes imposed by this section shall not apply.

* * * * *

CHAPTER 32—MANUFACTURERS EXCISE TAXES

* * * * *

Subchapter A—Automotive and Related Items

* * * * *

PART II—TIRES

SEC. 4071. IMPOSITION OF TAX.

(a) * * *
* * * * *

(d) TERMINATION.—On and after [April 1, 2012] *October 1, 2018*, the taxes imposed by subsection (a) shall not apply.

* * * * *

PART III—PETROLEUM PRODUCTS

* * * * *

Subpart A—Motor and Aviation Fuels

SEC. 4081. IMPOSITION OF TAX.

(a) * * *
* * * * *

(d) TERMINATION.—

(1) IN GENERAL.—The rates of tax specified in clauses (i) and (iii) of subsection (a)(2)(A) shall be 4.3 cents per gallon after [March 31, 2012] *September 30, 2018*.

* * * * *

(3) LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—The Leaking Underground Storage Tank Trust Fund financing rate under subsection (a)(2) shall apply after September 30, 1997, and before [April 1, 2012] *October 1, 2018*.

* * * * *

Subchapter G—Exemptions, Registration, Etc

SEC. 4221. CERTAIN TAX-FREE SALES.

(a) GENERAL RULE.—Under regulations prescribed by the Secretary, no tax shall be imposed under this chapter (other than under section 4121 or 4081) on the sale by the manufacturer (or under subchapter A or C of chapter 31 on the first retail sale) of an article—

(1) * * *

* * * * *

but only if such exportation or use is to occur before any other use. Paragraphs (4), (5), and (6) shall not apply to the tax imposed by section 4064. In the case of taxes imposed by section 4051, or 4071, paragraphs (4) and (5) shall not apply on and after [April 1, 2012] *October 1, 2018*. In the case of the tax imposed by section 4131, paragraphs (3), (4), and (5) shall not apply and paragraph (2) shall apply only if the use of the exported vaccine meets such requirements as the Secretary may by regulations prescribe. In the case of taxes imposed by subchapter A of chapter 31, paragraphs (1), (3), (4), and (5) shall not apply. In the case of taxes imposed by subchapter C or D, paragraph (6) shall not apply. In the case of the tax imposed by section 4191, paragraphs (3), (4), (5), and

* * * * *

CHAPTER 36—CERTAIN OTHER EXCISE TAXES

* * * * *

Subchapter D—Tax on Use of Certain Vehicles

SEC. 4481. IMPOSITION OF TAX.

(a) * * *

* * * * *

(f) PERIOD TAX IN EFFECT.—The tax imposed by this section shall apply only to use before October 1, [2012] *2018*.

SEC. 4482. DEFINITIONS.

(a) * * *

* * * * *

(c) OTHER DEFINITIONS AND SPECIAL RULE.—For purposes of this subchapter—

(1) * * *

* * * * *

(4) TAXABLE PERIOD.—The term “taxable period” means [any year beginning before July 1, 2012, and the period which begins on July 1, 2012, and ends at the close of September 30, 2012.] *each annual period beginning on October 1 which begins before October 1, 2019.*

* * * * *

[(d) SPECIAL RULE FOR TAXABLE PERIOD IN WHICH TERMINATION DATE OCCURS.—In the case of the taxable period which ends on September 30, 2012, the amount of the tax imposed by section 4481 with respect to any highway motor vehicle shall be determined by reducing each dollar amount in the table contained in section 4481(a) by 75 percent.]

* * * * *

(i) TERMINATION OF EXEMPTIONS.—Subsections (a) and (c) shall not apply on and after [April 1, 2012] *October 1, 2018*.

* * * * *

Subtitle F—Procedure and Administration

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CHAPTER 65—ABATEMENTS, CREDITS, AND REFUNDS

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Subchapter B—Rules of Special Application

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SEC. 6412. FLOOR STOCKS REFUNDS.

(a) IN GENERAL.—

(1) TIRES AND TAXABLE FUEL.—Where before [April 1, 2012] *October 1, 2018*, any article subject to the tax imposed by section 4071 or 4081 has been sold by the manufacturer, producer, or importer and on such date is held by a dealer and has not been used and is intended for sale, there shall be credited or refunded (without interest) to the manufacturer, producer, or importer an amount equal to the difference between the tax paid by such manufacturer, producer, or importer on his sale of the article and the amount of tax made applicable to such article on and after [April 1, 2012] *October 1, 2018*, if claim for such credit or refund is filed with the Secretary on or before [September 30, 2012] *September 30, 2018*, based upon a request submitted to the manufacturer, producer, or importer before [July 1, 2012] *January 1, 2019*, by the dealer who held the article in respect of which the credit or refund is claimed, and, on or before [September 30, 2012] *September 30, 2018*, reimbursement has been made to such dealer by such manufacturer, producer, or importer for the tax reduction on such article or written consent has been obtained from such dealer to allowance of such credit or refund. No credit or refund shall be allowable under this paragraph with respect to taxable fuel in retail stocks held at the place where intended to be sold at retail, nor with respect to taxable fuel held for sale by a producer or importer of taxable fuel.

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Subtitle I—Trust Fund Code

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CHAPTER 98—TRUST FUND CODE

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Subchapter A—Establishment of Trust Funds

* * * * *

SEC. 9503. HIGHWAY TRUST FUND.

(a) * * *

(b) TRANSFER TO HIGHWAY TRUST FUND OF AMOUNTS EQUIVALENT TO CERTAIN TAXES AND PENALTIES.—

(1) CERTAIN TAXES.—There are hereby appropriated to the Highway Trust Fund amounts equivalent to the taxes received in the Treasury before **April 1, 2012** *October 1, 2018*, under the following provisions—

(A) * * *

* * * * *

(2) LIABILITIES INCURRED BEFORE **APRIL 1, 2012** *OCTOBER 1, 2018*.—There are hereby appropriated to the Highway Trust Fund amounts equivalent to the taxes which are received in the Treasury after **March 31, 2012** *September 30, 2018*, and before **January 1, 2013** *July 1, 2019*, and which are attributable to liability for tax incurred before **April 1, 2012** *October 1, 2018*, under the provisions described in paragraph (1).

(3) REVENUES FROM CERTAIN DOMESTIC ENERGY LEASES.—*There are hereby appropriated to the Highway Trust Fund amounts equivalent to the net increase in Federal revenues from onshore and offshore domestic energy leasing and production generated by reason of the enactment of the Alaskan Energy for American Jobs Act, the PIONEERS Act, and the Energy Security and Transportation Jobs Act.*

* * * * *

(6) LIMITATION ON TRANSFERS TO HIGHWAY TRUST FUND.—

(A) * * *

(B) EXCEPTION FOR PRIOR OBLIGATIONS.—Subparagraph (A) shall not apply to any expenditure to liquidate any contract entered into (or for any amount otherwise obligated) before **April 1, 2012** *October 1, 2016*, in accordance with the provisions of this section.

(c) EXPENDITURES FROM HIGHWAY TRUST FUND.—

(1) FEDERAL-AID HIGHWAY PROGRAM.—Except as provided in subsection (e), amounts in the Highway Trust Fund shall be available, as provided by appropriation Acts, for making expenditures before **April 1, 2012** *October 1, 2016*, to meet those obligations of the United States heretofore or hereafter incurred which are authorized to be paid out of the Highway Trust Fund under the **Surface Transportation Extension Act of 2011, Part II** *American Energy and Infrastructure Jobs Act of 2012* or any other provision of law which was referred to in this paragraph before the date of the enactment of such Act (as such Act and provisions of law are in effect on the date of the enactment of such Act).

(2) FLOOR STOCKS REFUNDS.—The Secretary shall pay from time to time from the Highway Trust Fund into the general fund of the Treasury amounts equivalent to the floor stocks refunds made before **January 1, 2013** *July 1, 2019*, under section 6412(a). The amounts payable from the Highway Trust Fund under the preceding sentence shall be determined by taking into account only the portion of the taxes which are deposited into the Highway Trust Fund.

(3) TRANSFERS FROM THE TRUST FUND FOR MOTORBOAT FUEL TAXES.—

(A) TRANSFER TO LAND AND WATER CONSERVATION FUND.—

(i) IN GENERAL.—The Secretary shall pay from time to time from the Highway Trust Fund into the land and water conservation fund provided for in title I of the Land and Water Conservation Fund Act of 1965 amounts (as determined by the Secretary) equivalent to the motorboat fuel taxes received on or after October 1, 2005, and before **[April 1, 2012]** *October 1, 2018*.

* * * * *

(4) TRANSFERS FROM THE TRUST FUND FOR SMALL-ENGINE FUEL TAXES.—

(A) IN GENERAL.—The Secretary shall pay from time to time from the Highway Trust Fund into the Sport Fish Restoration and Boating Trust Fund amounts (as determined by him) equivalent to the small-engine fuel taxes received on or after December 1, 1990, and before **[April 1, 2012]** *October 1, 2018*.

* * * * *

(e) ESTABLISHMENT OF **[MASS TRANSIT ACCOUNT]** *ALTERNATIVE TRANSPORTATION ACCOUNT*.—

(1) CREATION OF ACCOUNT.—There is established in the Highway Trust Fund a separate account to be known as the “**[Mass Transit Account]** *Alternative Transportation Account*” consisting of such amounts as may be transferred or credited to the **[Mass Transit Account]** *Alternative Transportation Account* as provided in this section or section 9602(b).

[(2) TRANSFERS TO MASS TRANSIT ACCOUNT.—The Secretary of the Treasury shall transfer to the Mass Transit Account the mass transit portion of the amounts appropriated to the Highway Trust Fund under subsection (b) which are attributable to taxes under sections 4041 and 4081 imposed after March 31, 1983. For purposes of the preceding sentence, the term “mass transit portion” means, for any fuel with respect to which tax was imposed under section 4041 or 4081 and otherwise deposited into the Highway Trust Fund, the amount determined at the rate of—

[(A) except as otherwise provided in this sentence, 2.86 cents per gallon,

[(B) 1.43 cents per gallon in the case of any partially exempt methanol or ethanol fuel (as defined in section 4041(m)) none of the alcohol in which consists of ethanol,

[(C) 1.86 cents per gallon in the case of liquefied natural gas,

[(D) 2.13 cents per gallon in the case of liquefied petroleum gas, and

[(E) 9.71 cents per MCF (determined at standard temperature and pressure) in the case of compressed natural gas.]

(2) APPROPRIATION.—

(A) IN GENERAL.—*Out of money in the Treasury not otherwise appropriated, there is hereby appropriated \$40,000,000,000 to the Alternative Transportation Account. Any amount appropriated under this paragraph shall remain available without fiscal year limitation.*

(B) TRANSFER TO HIGHWAY ACCOUNT OF 2012 APPROPRIATED AMOUNTS BASED ON FUELS TAX RECEIPTS.—Amounts transferred on or before the date of the enactment of this paragraph to the Mass Transit Account in the Highway Trust Fund for fiscal year 2012 are hereby transferred to the Highway Account of the Highway Trust Fund (as defined in paragraph (5)(B)).

(3) EXPENDITURES FROM ACCOUNT.—Amounts in the [Mass Transit Account] *Alternative Transportation Account* shall be available, as provided by appropriation Acts, for making capital or capital related expenditures (including capital expenditures for new projects) before [April 1, 2012] *October 1, 2016*, in accordance with the [Surface Transportation Extension Act of 2011, Part II] *American Energy and Infrastructure Jobs Act of 2012* or any other provision of law which was referred to in this paragraph before the date of the enactment of such Act (as such Act and provisions of law are in effect on the date of the enactment of such Act).

(4) LIMITATION.—Rules similar to the rules of subsection (d) shall apply to the [Mass Transit Account] *Alternative Transportation Account*.

(5) PORTION OF CERTAIN TRANSFERS TO BE MADE FROM ACCOUNT.—

(A) IN GENERAL.—Transfers under paragraphs (2) and (3) of subsection (c) shall be borne by the Highway Account and the [Mass Transit Account] *Alternative Transportation Account* in proportion to the respective revenues transferred under this section to the Highway Account (after the application of paragraph (2)) and the [Mass Transit Account] *Alternative Transportation Account*.

(B) HIGHWAY ACCOUNT.—For purposes of subparagraph (A), the term “Highway Account” means the portion of the Highway Trust Fund which is not the [Mass Transit Account] *Alternative Transportation Account*.

* * * * *

SEC. 9504. SPORT FISH RESTORATION AND BOATING TRUST FUND.

(a) * * *

(b) SPORT FISH RESTORATION AND BOATING TRUST FUND.—

(1) * * *

(2) EXPENDITURES FROM TRUST FUND.—Amounts in the Sport Fish Restoration and Boating Trust Fund shall be available, as provided by appropriation Acts, for making expenditures—

(A) to carry out the purposes of the Dingell-Johnson Sport Fish Restoration Act (as in effect on the date of the enactment of the [Surface Transportation Extension Act of 2011, Part II] *American Energy and Infrastructure Jobs Act of 2012*),

(B) to carry out the purposes of section 7404(d) of the Transportation Equity Act for the 21st Century (as in effect on the date of the enactment of the [Surface Transportation Extension Act of 2011, Part II] *American Energy and Infrastructure Jobs Act of 2012*), and

(C) to carry out the purposes of the Coastal Wetlands Planning, Protection and Restoration Act (as in effect on the date of the enactment of the [Surface Transportation

Extension Act of 2011, Part II] *American Energy and Infrastructure Jobs Act of 2012*).

Amounts transferred to such account under section 9503(c)(4) may be used only for making expenditures described in subparagraph (C) of this paragraph.

* * * * *

(d) **LIMITATION ON TRANSFERS TO TRUST FUND.—**

(1) * * *

(2) **EXCEPTION FOR PRIOR OBLIGATIONS.—**Paragraph (1) shall not apply to any expenditure to liquidate any contract entered into (or for any amount otherwise obligated) before [April 1, 2012] *October 1, 2016*, in accordance with the provisions of this section.

* * * * *

SEC. 9508. LEAKING UNDERGROUND STORAGE TANK TRUST FUND.

(a) * * *

* * * * *

(e) **LIMITATION ON TRANSFERS TO LEAKING UNDERGROUND STORAGE TANK TRUST FUND.—**

(1) * * *

(2) **EXCEPTION FOR PRIOR OBLIGATIONS.—**Paragraph (1) shall not apply to any expenditure to liquidate any contract entered into (or for any amount otherwise obligated) before [April 1, 2012] *October 1, 2016*, in accordance with the provisions of this section.

* * * * *

LAND AND WATER CONSERVATION FUND ACT OF 1965

* * * * *

TITLE II—MOTORBOAT FUEL TAX PROVISIONS

TRANSFERS TO AND FROM LAND AND WATER CONSERVATION FUND

SEC. 201. (a) * * *

(b) There shall be paid from time to time from the land and water conservation fund into the general fund of the Treasury amounts estimated by the Secretary of the Treasury as equivalent to—

(1) the amounts paid before [April 1, 2013] *October 1, 2019*, under section 6421 of the Internal Revenue Code of 1954 (relating to amounts paid in respect of gasoline used for certain nonhighway purposes or by local transit systems) with respect to gasoline used after December 31, 1964, in motorboats, on the basis of claims filed for periods ending before [April 1, 2012] *October 1, 2018*; and

(2) 80 percent of the floor stocks refunds made before [April 1, 2013] *October 1, 2019*, under section 6412 of such Code with respect to gasoline to be used in motorboats.

VII. DISSENTING VIEWS

DISSENTING VIEWS ON H.R. 3864, THE AMERICAN ENERGY AND INFRASTRUCTURE JOBS FINANCING ACT OF 2012

We, the undersigned Members of the Ways and Means Committee strongly oppose H.R. 3864, the “American Energy and Infrastructure Jobs Financing Act of 2012.” The bill would inflict extraordinary harm on the future of mass transit in our country, and eliminate dedicated funding for our nation’s mass transit needs—a commitment that has been in place for 30 years.

Under current law, 2.86 cents per-gallon of the 18.3 cents per-gallon gas tax is automatically directed to the Mass Transit Account within the Highway Trust Fund. Funds in this account are used for a variety of vital programs, including:

- recapitalization of existing mass transit systems,
- support for urban areas,
- support for buses and bus facilities,
- support for rural areas,
- coordinated mobility and access programs for underserved populations, including the elderly and the disabled, and
- major capital improvements, including new transit investments both small and large (i.e., light rail, trolleys, etc.).

As of December 31, 2011, the Mass Transit Account had a balance of approximately \$7.3 billion. The Department of Transportation estimates that over \$8 billion is spent annually on important transit and transit-support projects. The bill would irresponsibly terminate the direct funding stream of revenue for the Mass Transit Account, and instead, fund the account through a one-time general fund transfer of \$40 billion. This is despite the fact that Republicans have previously referred to such transfers as “bailouts.” The bill would also rename the account the “Alternative Transportation Account.”

During the Committee markup, Members of the Republican Majority asserted that their proposed change to the funding of the Mass Transit Account would in fact put the account in a better position under current law over the next five years. They claimed that their proposed onetime \$40 billion general fund transfer would exceed the \$25 billion that the Congressional Budget Office projects would flow to the account from gas tax receipts over the next five years. The Republican Majority conveniently ignores two results of their policy in making this assertion. First, the Republican Majority ignores the ten-year effect of their policy, which would leave mass transit projects searching for certain funding after the duration of this highway bill. In fact, CBO projections would show that, under the current law funding system, the mass transit account

would, over ten years, in fact exceed the one-time transfer of \$40 billion. In the second five years, the Republican bill would not provide a single dollar of mass transit funding. Additionally, the Republican Majority relied on the word of the Budget Committee Chairman to ensure that the \$40 billion hole in the General Fund from the one-time transfer would in fact be made whole—hardly a reliable solution.

The bill also moves certain costly programs from the Highway Account in the Highway Trust Fund to the new Alternative Transportation Account, requiring programs currently eligible for funding under the Mass Transit Account to compete with a greater pool of expenditures while simultaneously limiting the amount in the account. This appears to be another step in the direction of woefully underfunding mass transit programs. The Transportation authorization bill has set a ceiling of \$8.4 billion of expenditures on currently eligible mass transit programs and \$2.7 billion new programs annually. Simple math will show that the one-time \$40 billion transfer from the General Fund to the new Alternative Transportation Account will not support these expenditures. Additionally, the Chairman's legislation would drain existing FY 2012 receipts from the fund, further complicating long-term mass transit programs. As a result of the changes made in the bill, it is estimated that mass transit project funding could be reduced by as much as 25 percent.

At the markup, Ways and Means Committee Democrats were joined by two Ways and Means Committee Republicans in bipartisan opposition to the Chairman's bill. The 17 Committee Members voting against the Chairman's bill were supported by over 600 organizations in their opposition, including groups as varied as the U.S. Chamber of Congress, the Club for Growth, and the American Association of Retired Persons. The Committee had two opportunities at the markup to strike the provisions dealing with eliminating the egregious termination of mass transit funding; both times Members of the Republican Majority voted against the proposed amendments. The Republican Majority also voted against extensions of the critical job-creating Build America Bonds program (which funded over \$181 billion in infrastructure improvements) and a bipartisan provision to enhance the funding of water and sewage facility improvements. Additionally, the Republican bill did not address other transportation funding issues, including the Harbor Maintenance Tax and Harbor Maintenance Trust Fund, both within the Ways and Means Committee's jurisdiction.

At the markup, it was suggested by one Ways and Means Committee Democratic Member that the Republican Majority ought to take the opportunity to scrap this bill and start from scratch on the Ways and Means Committee portion of the highway bill—a new bill that would promote the Democratic priority of job creation. Our committee is charged with raising the revenue to adequately fund our nations needed investments in infrastructure, and transportation is the key to job creation nationwide. H.R. 3864 fundamentally fails in those goals, discards the decades-long policy of raising revenue for the Highway Trust Fund through transportation related levies, and does not create meaningful jobs. Worse, it does so without having been examined in a single hearing before the Ways

& Means Committee. We urge the Republican Majority to reexamine options with respect to that suggestion and make necessary changes to the underlying bill to ensure that mass transit priorities are not jeopardized.

SANDER LEVIN.
CHARLES B. RANGEL.
FORTNEY PETE STARK.
JIM McDERMOTT.
JOHN B. LEWIS.
RICHARD NEAL.
XAVIER BECERRA.
LLOYD DOGGETT.
MIKE THOMPSON.
JOHN B. LARSON.
EARL BLUMENAUER.
RON KIND.
BILL PASCRELL, Jr.
SHELLEY BERKLEY.
JOE CROWLEY.

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