

115TH CONGRESS
1ST SESSION

H. R. 1664

To amend the Internal Revenue Code of 1986 to index the gas and diesel tax and rebuild our roads, bridges, and transit systems.

IN THE HOUSE OF REPRESENTATIVES

MARCH 22, 2017

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

A BILL

To amend the Internal Revenue Code of 1986 to index the gas and diesel tax and rebuild our roads, bridges, and transit systems.

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 “Investing in America:
5 A Penny for Progress Act”.

1 **SEC. 2. DOUBLE INDEXATION OF GASOLINE AND DIESEL**
 2 **FUELS TAX.**

3 (a) IN GENERAL.—Paragraph (2) of section 4081(a)
 4 of the Internal Revenue Code of 1986 is amended by add-
 5 ing at the end the following new subparagraph:

6 “(E) INDEX FOR HIGHWAY CONSTRUCTION
 7 COST INFLATION AND FUEL EFFICIENCY.—

8 “(i) IN GENERAL.—In the case of any
 9 calendar year after 2017, the 18.3 cents
 10 rate in subparagraph (A)(i), the 24.3 cents
 11 rate in subparagraph (A)(iii), and the 19.7
 12 cents rate in subparagraph (D), shall each
 13 be increased by an amount equal to—

14 “(I) such dollar amount, multi-
 15 plied by

16 “(II) the double indexation for
 17 the calendar year.

18 Any increase determined under this sub-
 19 paragraph shall be rounded to the nearest
 20 tenth of a cent.

21 “(ii) EXCEPTION FOR FUEL USED IN
 22 AVIATION.—The adjustment under clause
 23 (i) shall not apply with respect to the rate
 24 of tax under subparagraph (A)(iii) for fuel
 25 referred to in subparagraph (C).

1 “(iii) SPECIAL RULES TO STABILIZE
2 RATES.—

3 “(I) If an adjustment of rates
4 under clause (i) for a calendar year
5 would result in rates in subpara-
6 graphs (A)(i), (A)(iii), and (D) in ef-
7 fect for the calendar year greater than
8 1.5 cents more than the rates in effect
9 under such subparagraphs for the pre-
10 ceding calendar year—

11 “(aa) the rates in subpara-
12 graphs (A)(i), (A)(iii), and (D)
13 for the calendar year shall be the
14 rates in effect under such sub-
15 paragraphs for the preceding cal-
16 endar year plus 1.5 cents,

17 “(bb) any adjustment of
18 rates that would have occurred
19 under clause (i) if item (aa) were
20 not in effect shall be applied
21 under that clause—

22 “(AA) in the succeeding
23 calendar year or years after
24 the rate is established under
25 clause (i) for that year, and

1 “(BB) until the cumu-
2 lative adjustment of rates
3 equals the adjustment that
4 would have applied under
5 clause (i) if item (aa) were
6 not in effect, and

7 “(cc) an adjustment of rates
8 under item (bb) remains subject
9 to item (aa).

10 “(II) If an adjustment of rates
11 under clause (i) for a calendar year
12 would result in rates in subpara-
13 graphs (A)(i), (A)(iii), and (D) in ef-
14 fect for the calendar year less than
15 the rates in effect under such sub-
16 paragraphs for the preceding calendar
17 year—

18 “(aa) no adjustment of such
19 rates shall be made for the cal-
20 endar year, and

21 “(bb) the rates in subpara-
22 graphs (A)(i), (A)(iii), and (D)
23 for the calendar year shall be the
24 rates in effect under such sub-

1 paragraphs for the preceding cal-
2 endar year.

3 “(iv) DOUBLE INDEXATION.—For
4 purposes of clause (i), the double index-
5 ation for any calendar year is the sum of—

6 “(I) the highway construction
7 cost adjustment, and

8 “(II) the CAFE fuel saved ad-
9 justment.

10 “(v) HIGHWAY CONSTRUCTION COST
11 ADJUSTMENT.—For purposes of clause
12 (iv), the highway construction cost adjust-
13 ment for any calendar year is the percent-
14 age (if any) by which—

15 “(I) the National Highway Con-
16 struction Cost Index for the preceding
17 calendar year, exceeds

18 “(II) the National Highway Con-
19 struction Cost Index for calendar year
20 2016 or, if applicable, the first year of
21 a successor index.

22 “(vi) NATIONAL HIGHWAY CONSTRUC-
23 TION COST INDEX FOR ANY CALENDAR
24 YEAR.—For purposes of clause (v), the
25 National Highway Construction Cost Index

1 for any calendar year is the average of the
2 National Highway Construction Cost Index
3 as of the close of the 12-month period end-
4 ing on June 30 of such calendar year.

5 “(vii) NATIONAL HIGHWAY CON-
6 STRUCTION COST INDEX.—For purposes of
7 clause (v), the term ‘National Highway
8 Construction Cost Index’ means the last
9 National Highway Construction Cost Index
10 published by the Department of Transpor-
11 tation or successor index.

12 “(viii) CAFE FUEL SAVED ADJUST-
13 MENT.—For purposes of clause (iv), the
14 CAFE fuel saved adjustment for a cal-
15 endar year is the percentage (if any) by
16 which annual motor fuel use is reduced by
17 the estimated CAFE fuel saved for that
18 calendar year from the annual motor fuel
19 use for the prior calendar year.

20 “(ix) ESTIMATED CAFE FUEL
21 SAVED.—The term ‘estimated CAFE fuel
22 saved’ for a calendar year means—

23 “(I) In the case of the 18.3 cents
24 rate in subparagraph (A)(i), the com-
25 bined gasoline fuel saved estimates

1 issued by the National Highway Traf-
2 fic Safety Administration and the En-
3 vironmental Protection Agency for
4 passenger automobiles and light
5 trucks published in the Federal Reg-
6 ister on May 7, 2010, and October 15,
7 2012, and for medium and heavy-duty
8 engines and vehicles published in the
9 Federal Register on September 15,
10 2011, and October 25, 2016, as part
11 of final rules to implement corporate
12 average fuel economy standards, and
13 such successor estimates included in
14 successor rules.

15 “(II) In the case of the 24.3
16 cents rate in subparagraph (A)(iii)
17 and the 19.7 cents rate in subpara-
18 graph (D), the combined diesel fuel
19 saved estimates issued by the Na-
20 tional Highway Traffic Safety Admin-
21 istration and the Environmental Pro-
22 tection Agency for medium and heavy-
23 duty engines and vehicles published in
24 the Federal Register on September
25 15, 2011, and October 25, 2016, as

1 part of final rules to implement cor-
2 porate average fuel economy stand-
3 ards, and such successor estimates in-
4 cluded in successor rules.

5 “(x) ANNUAL MOTOR FUEL USE.—

6 The term ‘annual motor fuel use’ means—

7 “(I) In the case of the 18.3 cents
8 rate in subparagraph (A)(i), the total
9 number of gallons of gasoline used in
10 a calendar year in highway use, as
11 published by the Federal Highway
12 Administration as part of its annual
13 motor fuel data survey.

14 “(II) In the case of the 24.3
15 cents rate in subparagraph (A)(iii)
16 and the 19.7 cents rate in subpara-
17 graph (D), the total number of gallons
18 of diesel used in a calendar year in
19 highway use, as published by the Fed-
20 eral Highway Administration as part
21 of its annual motor fuel data survey.

22 “(xi) NOTICE.—Not later than De-
23 cember 15, 2017, and annually thereafter,
24 the Secretary shall publish the rates of tax

1 as adjusted under this subparagraph for
 2 the succeeding calendar year.”.

3 (b) RETAIL FUEL EXCISE TAX.—Subsection (a) of
 4 section 4041 of such Code is amended by adding at the
 5 end the following new paragraph:

6 “(4) HIGHWAY INFLATION ADJUSTMENT.—If
 7 an increase in rates is made under section
 8 4081(a)(2)(E) for any calendar year after 2017,
 9 then each dollar amount in paragraphs (1)(C)(iii)(I),
 10 (2)(B)(i), (2)(B)(ii), (2)(B)(iv), and (3)(A) of this
 11 subsection and in subsections (b)(2)(A)(i),
 12 (b)(2)(C)(i), and (m)(1) shall be increased in the
 13 same manner and subject to the same conditions
 14 that are applicable under section 4081(a)(2)(E).”.

15 (c) CONFORMING AMENDMENT.—Subparagraph (A)
 16 of section 4081(a)(2) of such Code is amended by striking
 17 “The rate” and inserting “Except as provided in subpara-
 18 graph (C), the rate”.

19 (d) EFFECTIVE DATE.—The amendments made by
 20 this section shall apply to periods beginning after July 31,
 21 2017.

22 **SEC. 3. TRANSPORTATION BONDS.**

23 (a) ISSUANCE.—The Secretary of the Treasury shall,
 24 pursuant to subchapter I of chapter 31 of title 31, United
 25 States Code, issue bonds, to be known as “Invest in Amer-

1 ica Bonds”, which meet the terms and conditions of sub-
 2 section (b), and the bond revenue shall be transferred to
 3 the Highway Trust Fund with 80 percent allocated to the
 4 Highway Account (as defined in section 9503(e)(5)(B) of
 5 the Internal Revenue Code of 1986) and 20 percent allo-
 6 cated to the Mass Transit Account.

7 (b) TERMS AND CONDITIONS.—

8 (1) TERM.—Bonds issued under subsection (a)
 9 shall have terms of 30 years.

10 (2) FREQUENCY.—Bonds shall be issued under
 11 subsection (a) every fiscal year.

12 (3) FACE AMOUNT FORMULA FOR FISCAL
 13 YEARS 2017 THROUGH 2020.—Bonds issued under
 14 subsection (a) for each of fiscal years 2017 through
 15 2020 shall have a face amount that equals, for that
 16 fiscal year—

17 (A) the Federal share (as defined in sec-
 18 tion 503(b)(8)(C)(v) of title 23, United States
 19 Code, and section 308(e)(3)(E) of title 49,
 20 United States Code) of the most recent esti-
 21 mates required under section 503(b)(8)(C)(iv)
 22 of title 23, United States Code, and section
 23 308(e)(3)(D) of title 49, United States Code;
 24 minus

1 (B) the sum of the amount authorized in
2 section 5338(a)(1) of title 49, United States
3 Code, the amounts authorized in section
4 1101(a) of the FAST Act (Public Law 114–94;
5 129 Stat. 1322), the amounts authorized in sec-
6 tion 4001(a) of the FAST Act (Public Law
7 114–94; 129 Stat. 1497), and the amounts au-
8 thorized in section 31104(a) and 31110(a) of
9 title 49, United States Code, for that fiscal
10 year.

11 (4) FACE AMOUNT FORMULA FOR FISCAL
12 YEARS 2021 THROUGH 2013.—Bonds issued under
13 subsection (a) for each of fiscal years 2021 through
14 2030 shall have a face amount that equals, for that
15 fiscal year—

16 (A) the Federal share (as defined in sec-
17 tion 503(b)(8)(C)(v) of title 23, United States
18 Code, and section 308(e)(3)(E) of title 49,
19 United States Code) of the most recent esti-
20 mates required under section 503(b)(8)(C)(iv)
21 of title 23, United States Code, and section
22 308(e)(3)(D) of title 49, United States Code;
23 minus

24 (B) the expected revenue deposited into the
25 Highway Trust Fund for the corresponding fis-

1 cal year not including revenues attributed to
2 this section.

3 (5) AMOUNT OUTSTANDING.—Notwithstanding
4 paragraphs (3) and (4), the total face amount of
5 bonds issued under subsection (a) may not exceed
6 the amount the Secretary of the Treasury and the
7 Secretary of Transportation determines can be re-
8 deemed, taking into account this section and section
9 9503(g) of the Internal Revenue Code of 1986.

10 (6) SUNSET.—No bonds may be issued under
11 subsection (a) after September 30, 2030.

12 (c) CAPITAL INVESTMENT GRANT SPECIAL RULE.—
13 Prior to the application of section 105 of title 23, United
14 States Code, for a fiscal year, an amount equal to a per-
15 centage of bond revenue transferred to the Highway Trust
16 Fund and allocated to the Mass Transit Account equal
17 to the ratio of the funds appropriated in the preceding
18 fiscal year to carry out section 5309 of title 49, United
19 States Code, to the funds made available in the same fiscal
20 year to carry out section 5338(a)(1) of title 49, United
21 States Code, shall be available to make additional grants
22 pursuant to section 5309 of title 49, United States Code.

23 (d) SET-ASIDE SPECIAL RULE.—

24 (1) IN GENERAL.—In determining the addi-
25 tional amounts of contract authority to be made

1 available under section 105 of title 23, United States
2 Code, for a fiscal year, the Secretary shall make ad-
3 justments under section 105(c)(1) of title 23, United
4 States Code, for a set-aside from the Highway Ac-
5 count (as defined in section 9503(e)(5)(B) of the In-
6 ternal Revenue Code of 1986) or Mass Transit Ac-
7 count referred to in paragraph (2)—

8 (A) by determining the ratio that—

9 (i) the amount authorized to be ap-
10 propriated for the set-aside from the ac-
11 count for that fiscal year; bears to

12 (ii) the total amount authorized to be
13 appropriated for that fiscal year for all
14 programs (except as provided in section
15 105(d) of title 23, United States Code)
16 under such account;

17 (B) by multiplying the ratio determined
18 under subparagraph (A) by the amount of the
19 adjustment for the account determined under
20 section 105(b)(1)(B) of title 23, United States
21 Code; and

22 (C) by adjusting the amount that the Sec-
23 retary would have allocated for the set-aside for
24 that fiscal year but for section 105 of title 23,

1 United States Code, by the amount calculated
2 under subparagraph (B).

3 (2) SET-ASIDES.—The set-asides referred to in
4 paragraph (1) are the amounts reserved for a fiscal
5 year under each of—

6 (A) section 104(b)(5)(B) of title 23,
7 United States Code;

8 (B) sections 104(h)(1) and 104(h)(2) of
9 title 23, United States Code;

10 (C) section 130(e)(1) of title 23, United
11 States Code;

12 (D) section 133(h)(1)(A) of title 23,
13 United States Code;

14 (E) section 1519(a) of MAP–21 (126 Stat.
15 524), as amended by section 1418 of the FAST
16 Act (129 Stat. 1423); and

17 (F) section 5336(h)(1) of title 49, United
18 States Code.

19 (3) CONFORMING AMENDMENTS.—Section
20 105(g) of title 23, United States Code, is amend-
21 ed—

22 (A) in paragraph (2) by inserting “or the
23 Temporary Transportation Bond Repayment
24 Account” before the period at the end; and

25 (B) by adding at the end the following:

1 “(4) TEMPORARY TRANSPORTATION BOND RE-
2 PAYMENT ACCOUNT.—The term ‘Temporary Trans-
3 portation Bond Repayment Account’ means the
4 Temporary Transportation Bond Repayment Ac-
5 count of the Highway Trust Fund established under
6 section 9503(g) of the Internal Revenue Code of
7 1986.”.

8 (e) TEMPORARY TRANSPORTATION BOND REPAY-
9 MENT ACCOUNT.—Section 9503 of the Internal Revenue
10 Code of 1986 is amended by adding at the end the fol-
11 lowing new subsection:

12 “(g) ESTABLISHMENT OF TEMPORARY TRANSPOR-
13 TATION BOND REPAYMENT ACCOUNT.—

14 “(1) CREATION OF ACCOUNT.—There is estab-
15 lished in the Highway Trust Fund a separate ac-
16 count to be known as the ‘Temporary Transpor-
17 tation Bond Repayment Account’ consisting of such
18 amounts as may be transferred or credited to the
19 Temporary Transportation Bond Repayment Ac-
20 count as provided in this section.

21 “(2) TRANSFERS TO TEMPORARY TRANSPOR-
22 TATION BOND REPAYMENT ACCOUNT.—The Sec-
23 retary of the Treasury shall transfer to the Tem-
24 porary Transportation Bond Repayment Account the
25 portion of the amounts appropriated to the Highway

1 Trust Fund under subsection (b) which are attrib-
 2 utable to the increase in taxes under—

3 “(A) section 4041 by reason of section
 4 4041(a)(4), and

5 “(B) section 4081 by reason of section
 6 4081(a)(2)(E).

7 “(3) EXPENDITURES FROM ACCOUNT.—
 8 Amounts in the Temporary Transportation Bond
 9 Repayment Account shall be available for redeeming
 10 bonds and paying interest payments issued under
 11 section 3 of the Investing in America: A Penny for
 12 Progress Act.

13 “(4) TERMINATION.—When all bonds issued
 14 under section 3 of the Investing in America: A
 15 Penny for Progress Act have been redeemed—

16 “(A) the Temporary Transportation Bond
 17 Repayment Account shall close, and

18 “(B) all amounts in the account (and all
 19 future revenue that, absent this paragraph,
 20 would have been transferred to the account pur-
 21 suant to paragraph (2)) shall be transferred to
 22 the Highway Trust Fund with 80 percent allo-
 23 cated to the Highway Account (as defined in
 24 section 9503(e)(5)(B) of the Internal Revenue

1 Code of 1986) and 20 percent allocated to the
 2 Mass Transit Account.”.

3 (f) CONFORMING AMENDMENT.—Section
 4 9503(e)(5)(B) of the Internal Revenue Code of 1986 is
 5 amended by inserting “or the Temporary Transportation
 6 Bond Repayment Account” before the period at the end.

7 (g) EFFECTIVE DATE.—The amendments made by
 8 this section shall apply upon enactment of this law.

9 **SEC. 4. CONDITIONS AND PERFORMANCE REPORTING.**

10 (a) REPORT ON INFRASTRUCTURE INVESTMENT
 11 NEEDS.—Section 503(b)(8) of title 23, United States
 12 Code, is amended to read as follows:

13 “(8) REPORT ON INFRASTRUCTURE INVEST-
 14 MENT NEEDS.—

15 “(A) IN GENERAL.—Not later than July
 16 31, 2018, and July 31 of every second year
 17 thereafter, the Secretary shall submit to the
 18 Committee on Transportation and Infrastruc-
 19 ture of the House of Representatives and the
 20 Committee on Environment and Public Works
 21 of the Senate a report that describes—

22 “(i) the current conditions and per-
 23 formance of highway and bridge facilities
 24 in the United States, including the backlog
 25 of current highway and bridge needs; and

1 “(ii) the future needs of highway and
2 bridge facilities in the United States.

3 “(B) COMPARISONS.—A report under this
4 paragraph shall include all information nec-
5 essary to relate and compare the conditions and
6 performance measures used in the previous bi-
7 ennial reports to the conditions and perform-
8 ance measures used in the current report.

9 “(C) REPORT REQUIREMENTS.—In devel-
10 oping a report under this paragraph, the Sec-
11 retary shall—

12 “(i) prepare a complete assessment of
13 highway and bridge facilities in the United
14 States;

15 “(ii) for the succeeding 20-year pe-
16 riod, estimate future capital requirements
17 for highway and bridge facilities in the
18 United States at specified levels of service;

19 “(iii) for the succeeding 20-year pe-
20 riod, estimate the annual expenditures nec-
21 essary to fund capital projects in the
22 United States that—

23 “(I) are necessary to address the
24 current and future needs of highway
25 and bridge facilities; and

1 “(II) have a benefit-cost ratio
2 greater than or equal to 1;

3 “(iv) for the period ending December
4 31, 2036, estimate the annual expenditures
5 necessary to fund capital projects in the
6 United States that—

7 “(I) are necessary to address the
8 current and future needs of highway
9 and bridge facilities; and

10 “(II) have a benefit-cost ratio
11 greater than or equal to 1; and

12 “(v) for the preceding 10-year period,
13 estimate the average annual percentage of
14 the total expenditures made for highway
15 and bridge capital projects by all levels of
16 government that was derived from Federal
17 funds.”.

18 (b) REPORT ON PUBLIC TRANSPORTATION INVEST-
19 MENT NEEDS.—Section 308(e) of title 49, United States
20 Code, is amended to read as follows:

21 “(e) REPORT ON PUBLIC TRANSPORTATION INVEST-
22 MENT NEEDS.—

23 “(1) IN GENERAL.—Not later than July 31,
24 2018, and July 31 of every second year thereafter,
25 the Secretary shall submit to the Committee on

1 Transportation and Infrastructure of the House of
2 Representatives and the Committee on Banking,
3 Housing, and Urban Affairs of the Senate a report
4 that describes—

5 “(A) the current conditions and perform-
6 ance of public transportation systems in the
7 United States, including the state of good re-
8 pair backlog among existing public transpor-
9 tation systems; and

10 “(B) the future needs of public transpor-
11 tation systems in the United States.

12 “(2) COMPARISONS.—A report under this sub-
13 section shall include all information necessary to re-
14 late and compare the conditions and performance
15 measures used in the previous biennial reports to the
16 conditions and performance measures used in the
17 current report.

18 “(3) CONTENTS.—In developing a report under
19 this subsection, the Secretary shall—

20 “(A) prepare a complete assessment of
21 public transportation systems in the United
22 States;

23 “(B) for the succeeding 20-year period, es-
24 timate the future capital requirements for pub-

1 lic transportation systems in the United States
2 at specified levels of service;

3 “(C) for the succeeding 20-year period, es-
4 timate the annual capital expenditures nec-
5 essary to fund capital projects in the United
6 States that have a benefit-cost ratio greater
7 than one and are necessary—

8 “(i) to achieve and maintain a state of
9 good repair for public transportation sys-
10 tems; and

11 “(ii) to support the long-term trend
12 rate of public transportation ridership
13 growth, plus an additional 0.3 percent; and

14 “(D) for the period ending December 31,
15 2036, estimate the annual capital expenditures
16 necessary to fund capital projects in the United
17 States that have a benefit-cost ratio greater
18 than one and are necessary—

19 “(i) to achieve and maintain a state of
20 good repair for public transportation sys-
21 tems; and

22 “(ii) to support the long-term trend
23 rate of public transportation ridership
24 growth, plus an additional 0.3 percent; and

1 “(E) for the preceding 10-year period, esti-
2 mate the average annual percentage of the total
3 expenditures made by all levels of government
4 for public transportation capital expenditures
5 that was derived from Federal funds.”.

6 (c) INTERIM REPORTING METHOD.—Prior to the
7 publication of the reports required under the amendments
8 made by subsections (a) and (b), the Secretary of Trans-
9 portation shall provide to the Secretary of the Treasury
10 the data necessary to calculate the bond face amount
11 under section 3(b) using the most recent published reports
12 required by section 503(b)(8) of title 23, United States
13 Code, and section 308(e) of title 49, United States Code.

14 **SEC. 5. REPEAL OF FAST ACT RESCISSION.**

15 Section 1438 of the FAST Act (Public Law 114–94;
16 129 Stat. 1432), and the item relating to that section in
17 section 1(b) of that Act, are repealed.

○