

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 428

To provide \$30,000,000,000 in new transportation infrastructure funding in addition to TEA–21 levels through bonding to empower States and local governments to complete significant long-term capital improvement projects for highways, public transportation systems, and rail systems, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 17, 2005

Mr. TALENT (for himself, Mr. WYDEN, Mr. ALLEN, Mr. COLEMAN, Ms. COLLINS, Mr. CORZINE, Mr. DAYTON, Mrs. DOLE, Mr. GRAHAM, and Mr. VITTER) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To provide \$30,000,000,000 in new transportation infrastructure funding in addition to TEA–21 levels through bonding to empower States and local governments to complete significant long-term capital improvement projects for highways, public transportation systems, and rail systems, 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; ETC.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Build America Bonds Act of 2005”.

★(Star Print)

1 (b) REFERENCES TO INTERNAL REVENUE CODE OF  
2 1986.—Except as otherwise expressly provided, whenever  
3 in this Act an amendment or repeal is expressed in terms  
4 of an amendment to, or repeal of, a section or other provi-  
5 sion, the reference shall be considered to be made to a  
6 section or other provision of the Internal Revenue Code  
7 of 1986.

8 **SEC. 2. FINDINGS AND PURPOSE.**

9 (a) FINDINGS.—Congress finds the following:

10 (1) Our Nation’s highways, public transpor-  
11 tation systems, and rail systems drive our economy,  
12 enabling all industries to achieve growth and produc-  
13 tivity that makes America strong and prosperous.

14 (2) The establishment, maintenance, and im-  
15 provement of the national transportation network is  
16 a national priority, for economic, environmental, en-  
17 ergy, security, and other reasons.

18 (3) The ability to move people and goods is crit-  
19 ical to maintaining State, metropolitan, rural, and  
20 local economies.

21 (4) The construction of infrastructure requires  
22 the skills of numerous occupations, including those  
23 in the contracting, engineering, planning and design,  
24 materials supply, manufacturing, distribution, and  
25 safety industries.

1           (5) Investing in transportation infrastructure  
2           creates long-term capital assets for the Nation that  
3           will help the United States address its enormous in-  
4           frastructure needs and improve its economic produc-  
5           tivity.

6           (6) Investment in transportation infrastructure  
7           creates jobs and spurs economic activity to put peo-  
8           ple back to work and stimulate the economy.

9           (7) Every billion dollars in transportation in-  
10          vestment has the potential to create up to 47,500  
11          jobs.

12          (8) Every dollar invested in the Nation's trans-  
13          portation infrastructure yields at least \$5.70 in eco-  
14          nomic benefits because of reduced delays, improved  
15          safety, and reduced vehicle operating costs.

16          (9) The proposed increases to the Transpor-  
17          tation Equity Act for the 21st Century (TEA-21)  
18          will not be sufficient to compensate for the Nation's  
19          transportation infrastructure deficit.

20          (b) PURPOSE.—The purpose of this Act is to provide  
21          financing for long-term infrastructure capital investments  
22          that are not currently being met by existing transportation  
23          and infrastructure investment programs, including mega-  
24          projects, projects of national significance, multistate  
25          transportation corridors, intermodal transportation facili-

1 ties, and transportation and security improvements to  
 2 highways, public transportation systems, and rail systems.

3 **SEC. 3. CREDIT TO HOLDERS OF BUILD AMERICA BONDS.**

4 (a) IN GENERAL.—Part IV of subchapter A of chap-  
 5 ter 1 (relating to credits against tax) is amended by add-  
 6 ing at the end the following new subpart:

7 **“Subpart H—Nonrefundable Credit for Holders of**  
 8 **Build America Bonds**

“Sec. 54. Credit to holders of Build America bonds.

9 **“SEC. 54. CREDIT TO HOLDERS OF BUILD AMERICA BONDS.**

10 “(a) ALLOWANCE OF CREDIT.—In the case of a tax-  
 11 payer who holds a Build America bond on a credit allow-  
 12 ance date of such bond which occurs during the taxable  
 13 year, there shall be allowed as a credit against the tax  
 14 imposed by this chapter for such taxable year an amount  
 15 equal to the sum of the credits determined under sub-  
 16 section (b) with respect to credit allowance dates during  
 17 such year on which the taxpayer holds such bond.

18 “(b) AMOUNT OF CREDIT.—

19 “(1) IN GENERAL.—The amount of the credit  
 20 determined under this subsection with respect to any  
 21 credit allowance date for a Build America bond is 25  
 22 percent of the annual credit determined with respect  
 23 to such bond.

1           “(2) ANNUAL CREDIT.—The annual credit de-  
2           termined with respect to any Build America bond is  
3           the product of—

4                   “(A) the applicable credit rate, multiplied  
5           by

6                   “(B) the outstanding face amount of the  
7           bond.

8           “(3) APPLICABLE CREDIT RATE.—For purposes  
9           of paragraph (2), the applicable credit rate with re-  
10          spect to an issue is the rate equal to an average  
11          market yield (as of the day before the date of sale  
12          of the issue) on outstanding long-term corporate  
13          debt obligations (determined in such manner as the  
14          Secretary prescribes).

15          “(4) CREDIT ALLOWANCE DATE.—For purposes  
16          of this section, the term ‘credit allowance date’  
17          means—

18                   “(A) March 15,

19                   “(B) June 15,

20                   “(C) September 15, and

21                   “(D) December 15.

22          Such term includes the last day on which the bond  
23          is outstanding.

24          “(5) SPECIAL RULE FOR ISSUANCE AND RE-  
25          DEMPTION.—In the case of a bond which is issued

1 during the 3-month period ending on a credit allow-  
2 ance date, the amount of the credit determined  
3 under this subsection with respect to such credit al-  
4 lowance date shall be a ratable portion of the credit  
5 otherwise determined based on the portion of the 3-  
6 month period during which the bond is outstanding.  
7 A similar rule shall apply when the bond is re-  
8 deemed.

9 “(c) LIMITATION BASED ON AMOUNT OF TAX.—

10 “(1) IN GENERAL.—The credit allowed under  
11 subsection (a) for any taxable year shall not exceed  
12 the excess of—

13 “(A) the sum of the regular tax liability  
14 (as defined in section 26(b)) plus the tax im-  
15 posed by section 55, over

16 “(B) the sum of the credits allowable  
17 under this part (other than this subpart and  
18 subpart C).

19 “(2) CARRYOVER OF UNUSED CREDIT.—If the  
20 credit allowable under subsection (a) exceeds the  
21 limitation imposed by paragraph (1) for such taxable  
22 year, such excess shall be carried to the succeeding  
23 taxable year and added to the credit allowable under  
24 subsection (a) for such taxable year.

1       “(d) CREDIT INCLUDED IN GROSS INCOME.—Gross  
2 income includes the amount of the credit allowed to the  
3 taxpayer under this section (determined without regard to  
4 subsection (c)) and the amount so included shall be treat-  
5 ed as interest income.

6       “(e) BUILD AMERICA BOND.—For purposes of this  
7 part, the term ‘Build America bond’ means any bond  
8 issued as part of an issue if—

9               “(1) the net spendable proceeds from the sale  
10 of such issue are to be used—

11                       “(A) for expenditures incurred after the  
12 date of the enactment of this section for any  
13 qualified project, or

14                       “(B) for deposit in the Build America  
15 Trust Account for repayment of Build America  
16 bonds at maturity,

17               “(2) the bond is issued by the Transportation  
18 Finance Corporation, is in registered form, and  
19 meets the Build America bond limitation require-  
20 ments under subsection (g),

21               “(3) the Transportation Finance Corporation  
22 certifies that it meets the State contribution require-  
23 ment of subsection (k) with respect to such project,  
24 as in effect on the date of issuance,

1           “(4) the Transportation Finance Corporation  
2 certifies that the State in which an approved quali-  
3 fied project is located meets the requirement de-  
4 scribed in subsection (l),

5           “(5) except for bonds issued in accordance with  
6 subsection (g)(6), the term of each bond which is  
7 part of such issue does not exceed 30 years,

8           “(6) the payment of principal with respect to  
9 such bond is the obligation of the Transportation Fi-  
10 nance Corporation, and

11           “(7) with respect to bonds described in para-  
12 graph (1)(A), the issue meets the requirements of  
13 subsection (h) (relating to arbitrage).

14           “(f) QUALIFIED PROJECT.—For purposes of this sec-  
15 tion—

16           “(1) IN GENERAL.—The term ‘qualified project’  
17 means any—

18           “(A) qualified highway project, and

19           “(B) qualified public transportation  
20 project,

21 proposed by 1 or more States and approved by the  
22 Transportation Finance Corporation.

23           “(2) QUALIFIED HIGHWAY PROJECT.—

24           “(A) IN GENERAL.—The term ‘qualified  
25 highway project’ means any—

1 “(i) project of regional or national sig-  
2 nificance,

3 “(ii) multistate corridor program,

4 “(iii) border planning, operations,  
5 technology, and capacity improvement pro-  
6 gram, and

7 “(iv) freight intermodal connector  
8 project.

9 “(B) PROJECTS OF REGIONAL AND NA-  
10 TIONAL SIGNIFICANCE.—

11 “(i) IN GENERAL.—The term ‘project  
12 of regional or national significance’ means  
13 the eligible project costs of any surface  
14 transportation project which is eligible for  
15 Federal assistance under title 23, United  
16 States Code, including any freight rail  
17 project and activity eligible under such  
18 title, if such eligible project costs are rea-  
19 sonably anticipated to equal or exceed the  
20 lesser of—

21 “(I) \$100,000,000, or

22 “(II) 50 percent of the amount of  
23 Federal highway assistance funds ap-  
24 portioned for the most recently com-

1           pleted fiscal year to the State in  
2           which the project is located.

3           “(ii) ELIGIBLE PROJECT COSTS.—The  
4           term ‘eligible project costs’ means the costs  
5           of—

6                       “(I) development phase activities,  
7                       including planning, feasibility anal-  
8                       ysis, revenue forecasting, environ-  
9                       mental review, preliminary engineer-  
10                      ing and design work, and other  
11                      preconstruction activities, and

12                     “(II) construction, reconstruc-  
13                     tion, rehabilitation, and acquisition of  
14                     real property (including land related  
15                     to the project and improvements to  
16                     land), environmental mitigation, con-  
17                     struction contingencies, acquisition of  
18                     equipment, and operational improve-  
19                     ments.

20           “(iii) CRITERIA FOR APPROVAL.—The  
21           Transportation Finance Corporation may  
22           approve a project of regional or national  
23           significance only if the Corporation deter-  
24           mines that the project is based on the re-

1 sults of preliminary engineering, and is  
2 justified based on the project’s ability—

3 “(I) to generate national or re-  
4 gional economic benefits, including  
5 creating jobs, expanding business op-  
6 portunities, and impacting the gross  
7 domestic product,

8 “(II) to reduce congestion, in-  
9 cluding impacts in the State, region,  
10 and Nation,

11 “(III) to improve transportation  
12 safety, including reducing transpor-  
13 tation accidents, injuries, and fatali-  
14 ties, and

15 “(IV) to otherwise enhance the  
16 national transportation system.

17 “(C) MULTISTATE CORRIDOR PROGRAM.—

18 “(i) IN GENERAL.—The term  
19 ‘multistate corridor program’ means any  
20 program for multistate highway and  
21 multimodal planning studies and construc-  
22 tion.

23 “(ii) CRITERIA FOR APPROVAL.—The  
24 Transportation Finance Corporation shall

1 consider in approving any multistate cor-  
2 ridor program—

3 “(I) the existence and signifi-  
4 cance of signed and binding multi-  
5 jurisdictional agreements,

6 “(II) prospects for early comple-  
7 tion of the program, or

8 “(III) whether the projects under  
9 such program to be studied or con-  
10 structed are located on corridors iden-  
11 tified by section 1105(c) of the Inter-  
12 modal Surface Transportation Effi-  
13 ciency Act of 1991 (Public Law 102-  
14 240; 105 Stat. 2032).

15 “(D) BORDER PLANNING, OPERATIONS,  
16 TECHNOLOGY, AND CAPACITY IMPROVEMENT  
17 PROGRAM.—

18 “(i) IN GENERAL.—The term ‘border  
19 planning, operations, technology, and ca-  
20 pacity improvement program’ means any  
21 program which includes 1 or more eligible  
22 activities to support coordination and im-  
23 provement in bi-national transportation  
24 planning, operations, efficiency, informa-  
25 tion exchange, safety, and security at the

1 international borders of the United States  
2 with Canada and Mexico.

3 “(ii) ELIGIBLE ACTIVITIES.—For pur-  
4 poses of this subparagraph, the term ‘eligi-  
5 ble activities’ means—

6 “(I) highway and multimodal  
7 planning or environmental studies,

8 “(II) cross-border port of entry  
9 and safety inspection improvements,  
10 including operational enhancements  
11 and technology applications,

12 “(III) technology and informa-  
13 tion exchange activities, and

14 “(IV) right-of-way acquisition,  
15 design, and construction, as needed to  
16 implement the enhancements or appli-  
17 cations described in subclauses (II)  
18 and (III), to decrease air pollution  
19 emissions from vehicles or inspection  
20 facilities at border crossings, or to in-  
21 crease highway capacity at or near  
22 international borders.

23 “(E) FREIGHT INTERMODAL CONNECTOR  
24 PROJECT.—

1           “(i) IN GENERAL.—The term ‘freight  
2 intermodal connector project’ means any  
3 project for the construction of and im-  
4 provements to publicly owned freight inter-  
5 modal connectors to the National Highway  
6 System, the provision of access to such  
7 connectors, and operational improvements  
8 for such connectors (including capital in-  
9 vestment for intelligent transportation sys-  
10 tems), except that a project located within  
11 the boundaries of an intermodal freight fa-  
12 cility shall only include highway infrastruc-  
13 ture modifications necessary to facilitate  
14 direct intermodal access between the con-  
15 nector and the facility.

16           “(ii) CRITERIA FOR APPROVAL.—The  
17 Transportation Finance Corporation shall  
18 consider in approving any freight inter-  
19 modal connector project the criteria set  
20 forth in the report of the Department of  
21 Transportation to Congress entitled ‘Pull-  
22 ing Together: The NHS and its Connec-  
23 tions to Major Intermodal Terminals’.

24           “(iii) FREIGHT INTERMODAL CON-  
25 NECTOR.—The term ‘freight intermodal

1 connector’ means the roadway that con-  
 2 nects to an intermodal freight facility that  
 3 carries or will carry intermodal traffic.

4 “(iv) INTERMODAL FREIGHT FACIL-  
 5 ITY.—The term ‘intermodal freight facility’  
 6 means a port, airport, truck-rail terminal,  
 7 and pipeline-truck terminal.

8 “(3) QUALIFIED PUBLIC TRANSPORTATION  
 9 PROJECT.—The term ‘qualified public transportation  
 10 project’ means a project for public transportation fa-  
 11 cilities or other facilities which are eligible for assist-  
 12 ance under title 49, United States Code, including  
 13 intercity passenger rail.

14 “(g) LIMITATION ON AMOUNT OF BONDS DES-  
 15 IGNATED; ALLOCATION OF BOND PROCEEDS.—

16 “(1) NATIONAL LIMITATION.—There is a Build  
 17 America bond limitation for each calendar year.  
 18 Such limitation is—

19 “(A) with respect to bonds described in  
 20 subsection (e)(1)(A)—

21 “(i) \$5,500,000,000 for 2005,

22 “(ii) \$8,000,000,000 for 2006,

23 “(iii) \$8,000,000,000 for 2007,

24 “(iv) \$3,000,000,000 for 2008,

25 “(v) \$3,000,000,000 for 2009,

1 “(vi) \$2,500,000,000 for 2010, and

2 “(vii) except as provided in paragraph

3 (4), zero thereafter, plus

4 “(B) with respect to bonds described in  
5 subsection (e)(1)(B), such amount each cal-  
6 endar year as determined necessary by the  
7 Transportation Finance Corporation to provide  
8 funds in the Build America Trust Account for  
9 the repayment of Build America bonds at matu-  
10 rity, except that the aggregate amount of such  
11 bonds for all calendar years shall not exceed  
12 \$9,000,000,000.

13 “(2) ALLOCATION OF BONDS FOR HIGHWAY  
14 AND PUBLIC TRANSPORTATION PURPOSES.—Except  
15 with respect to qualified projects described in sub-  
16 section (j)(3), and subject to paragraph (3)—

17 “(A) QUALIFIED HIGHWAY PROJECTS.—

18 From Build America bonds issued under the  
19 annual limitation in paragraph (1)(A), the  
20 Transportation Finance Corporation shall allo-  
21 cate 80 percent of the net spendable proceeds  
22 to the States for qualified highway projects des-  
23 ignated by law from recommendations sub-  
24 mitted to Congress identifying various projects  
25 approved as meeting the criteria required for

1 each such project by the Transportation Fi-  
2 nance Corporation.

3 “(B) QUALIFIED PUBLIC TRANSPORTATION  
4 PROJECTS.—From Build America bonds issued  
5 under the annual limitation in paragraph  
6 (1)(A), the Transportation Finance Corporation  
7 shall allocate 20 percent of the net spendable  
8 proceeds to the States for qualified public  
9 transportation projects designated by law from  
10 recommendations submitted to Congress identi-  
11 fying various projects approved as meeting the  
12 criteria required for each such project by the  
13 Transportation Finance Corporation.

14 “(3) MINIMUM ALLOCATIONS TO STATES.—In  
15 making allocations for each calendar year under  
16 paragraph (2), the Transportation Finance Corpora-  
17 tion shall ensure that the amount allocated for quali-  
18 fied projects located in each State for such calendar  
19 year is not less than ½ percent of the total amount  
20 allocated for such year.

21 “(4) CARRYOVER OF UNUSED ISSUANCE LIMI-  
22 TATION.—If for any calendar year the limitation  
23 amount imposed by paragraph (1) exceeds the  
24 amount of Build America bonds issued during such  
25 year, such excess shall be carried forward to one or

1 more succeeding calendar years as an addition to the  
2 limitation imposed by paragraph (1) and until used  
3 by issuance of Build America bonds.

4 “(5) ISSUANCE OF SMALL DENOMINATION  
5 BONDS.—From the Build America bond limitation  
6 for each year, the Transportation Finance Corpora-  
7 tion shall issue a limited quantity of Build America  
8 bonds in small denominations suitable for purchase  
9 as gifts by individual investors wishing to show their  
10 support for investing in America’s infrastructure.

11 “(h) SPECIAL RULES RELATING TO ARBITRAGE.—

12 “(1) IN GENERAL.—Subject to paragraph (2),  
13 an issue shall be treated as meeting the require-  
14 ments of this subsection if as of the date of  
15 issuance, the Transportation Finance Corporation  
16 reasonably expects—

17 “(A) to spend at least 85 percent of the  
18 net spendable proceeds from the sale of the  
19 issue for 1 or more qualified projects within the  
20 5-year period beginning on such date,

21 “(B) to incur a binding commitment with  
22 a third party to spend at least 10 percent of the  
23 net spendable proceeds from the sale of the  
24 issue, or to commence construction, with re-

1           spect to such projects within the 12-month pe-  
2           riod beginning on such date, and

3           “(C) to proceed with due diligence to com-  
4           plete such projects and to spend the net spend-  
5           able proceeds from the sale of the issue.

6           “(2) SPENT PROCEEDS.—Net spendable pro-  
7           ceeds are considered spent by the Transportation Fi-  
8           nance Corporation when a sponsor of a qualified  
9           project obtains a reimbursement from the Transpor-  
10          tation Finance Corporation for eligible project costs.

11          “(3) RULES REGARDING CONTINUING COMPLI-  
12          ANCE AFTER 5-YEAR DETERMINATION.—If at least  
13          85 percent of the net spendable proceeds from the  
14          sale of the issue is not expended for 1 or more quali-  
15          fied projects within the 5-year period beginning on  
16          the date of issuance, but the requirements of para-  
17          graph (1) are otherwise met, an issue shall be treat-  
18          ed as continuing to meet the requirements of this  
19          subsection if the Transportation Finance Corpora-  
20          tion uses all unspent net spendable proceeds from  
21          the sale of the issue to redeem bonds of the issue  
22          within 90 days after the end of such 5-year period.

23          “(4) REALLOCATION.—In the event the recipi-  
24          ent of an allocation under subsection (g) fails to  
25          demonstrate to the satisfaction of the Transpor-

1       tation Finance Corporation that its actions will allow  
2       the Transportation Finance Corporation to meet the  
3       requirements under this subsection, the Transpor-  
4       tation Finance Corporation may redistribute the al-  
5       location meant for such recipient to other recipients.

6       “(i) RECAPTURE OF PORTION OF CREDIT WHERE  
7       CESSATION OF COMPLIANCE.—

8               “(1) IN GENERAL.—If any bond which when  
9       issued purported to be a Build America bond ceases  
10      to be such a qualified bond, the Transportation Fi-  
11      nance Corporation shall pay to the United States (at  
12      the time required by the Secretary) an amount equal  
13      to the sum of—

14               “(A) the aggregate of the credits allowable  
15      under this section with respect to such bond  
16      (determined without regard to subsection (e))  
17      for taxable years ending during the calendar  
18      year in which such cessation occurs and the 2  
19      preceding calendar years, and

20               “(B) interest at the underpayment rate  
21      under section 6621 on the amount determined  
22      under subparagraph (A) for each calendar year  
23      for the period beginning on the first day of  
24      such calendar year.

1           “(2) FAILURE TO PAY.—If the Transportation  
2 Finance Corporation fails to timely pay the amount  
3 required by paragraph (1) with respect to such bond,  
4 the tax imposed by this chapter on each holder of  
5 any such bond which is part of such issue shall be  
6 increased (for the taxable year of the holder in which  
7 such cessation occurs) by the aggregate decrease in  
8 the credits allowed under this section to such holder  
9 for taxable years beginning in such 3 calendar years  
10 which would have resulted solely from denying any  
11 credit under this section with respect to such issue  
12 for such taxable years.

13           “(3) SPECIAL RULES.—

14           “(A) TAX BENEFIT RULE.—The tax for  
15 the taxable year shall be increased under para-  
16 graph (2) only with respect to credits allowed  
17 by reason of this section which were used to re-  
18 duce tax liability. In the case of credits not so  
19 used to reduce tax liability, the carryforwards  
20 and carrybacks under section 39 shall be appro-  
21 priately adjusted.

22           “(B) NO CREDITS AGAINST TAX.—Any in-  
23 crease in tax under paragraph (2) shall not be  
24 treated as a tax imposed by this chapter for  
25 purposes of determining—

1                   “(i) the amount of any credit allow-  
2                   able under this part, or

3                   “(ii) the amount of the tax imposed  
4                   by section 55.

5           “(j) BUILD AMERICA TRUST ACCOUNT.—

6                   “(1) IN GENERAL.—The following amounts  
7                   shall be held in a Build America Trust Account by  
8                   the Transportation Finance Corporation:

9                           “(A) The proceeds from the sale of all  
10                           bonds issued under this section.

11                           “(B) The amount of any matching con-  
12                           tributions with respect to such bonds.

13                           “(C) The investment earnings on proceeds  
14                           from the sale of such bonds.

15                           “(D) Any earnings on any amounts de-  
16                           scribed in subparagraph (A), (B), or (C).

17                   “(2) USE OF FUNDS.—Amounts in the Build  
18                   America Trust Account may be used only to pay  
19                   costs of qualified projects, redeem Build America  
20                   bonds, and fund the operations of the Transpor-  
21                   tation Finance Corporation, except that amounts  
22                   withdrawn from the Build America Trust Account to  
23                   pay costs of qualified projects may not exceed the  
24                   aggregate proceeds from the sale of Build America  
25                   bonds described in subsection (e)(1)(A).

1           “(3) USE OF REMAINING FUNDS IN BUILD  
2 AMERICA TRUST ACCOUNT.—Upon the redemption of  
3 all Build America bonds issued under this section,  
4 any remaining amounts in the Build America Trust  
5 Account shall be available to the Transportation Fi-  
6 nance Corporation to pay the costs of any qualified  
7 project.

8           “(4) COSTS OF QUALIFIED PROJECTS.—For  
9 purposes of this section, the costs of qualified  
10 projects which may be funded by amounts in the  
11 Build America Trust Account may only relate to  
12 capital investments in depreciable assets and may  
13 not include any costs relating to operations, mainte-  
14 nance, or rolling stock.

15           “(5) APPLICABILITY OF FEDERAL LAW.—The  
16 requirements of any Federal law, including titles 23,  
17 40, and 49 of the United States Code, which would  
18 otherwise apply to projects to which the United  
19 States is a party or to funds made available under  
20 such law and projects assisted with those funds shall  
21 apply to—

22           “(A) funds made available under the Build  
23 America Trust Account for similar qualified  
24 projects, including contributions required under  
25 subsection (k), and

1           “(B) similar qualified projects assisted by  
2           the Transportation Finance Corporation  
3           through the use of such funds.

4           “(6) INVESTMENT.—It shall be the duty of the  
5           Transportation Finance Corporation to invest in in-  
6           vestment grade obligations such portion of the Build  
7           America Trust Account as is not, in the judgment  
8           of the Board of Directors of the Transportation Fi-  
9           nance Corporation, required to meet current with-  
10          drawals. To the maximum extent practicable, invest-  
11          ments should be made in securities that support  
12          transportation investment at the State and local  
13          level.

14          “(k) STATE CONTRIBUTION REQUIREMENTS.—

15                 “(1) IN GENERAL.—For purposes of subsection  
16                 (e)(3), the State contribution requirement of this  
17                 subsection is met with respect to any qualified  
18                 project if the Transportation Finance Corporation  
19                 has received from 1 or more States, not later than  
20                 the date of issuance of the bond, written commit-  
21                 ments for matching contributions of not less than 20  
22                 percent (or such smaller percentage as determined  
23                 under title 23, United States Code, for such State)  
24                 of the cost of the qualified project.

1           “(2) STATE MATCHING CONTRIBUTIONS MAY  
2 NOT INCLUDE FEDERAL FUNDS.—For purposes of  
3 this subsection, State matching contributions shall  
4 not be derived, directly or indirectly, from Federal  
5 funds, including any transfers from the Highway  
6 Trust Fund under section 9503.

7           “(1) UTILIZATION OF UPDATED CONSTRUCTION  
8 TECHNOLOGY FOR QUALIFIED PROJECTS.—For purposes  
9 of subsection (e)(4), the requirement of this subsection is  
10 met if the appropriate State agency relating to the quali-  
11 fied project has updated its accepted construction tech-  
12 nologies to match a list prescribed by the Secretary of  
13 Transportation and in effect on the date of the approval  
14 of the project as a qualified project.

15           “(m) OTHER DEFINITIONS AND SPECIAL RULES.—  
16 For purposes of this section—

17           “(1) ADMINISTRATIVE COSTS.—The term ‘ad-  
18 ministrative costs’ shall only include costs of  
19 issuance of Build America bonds and operation costs  
20 of the Transportation Corporation.

21           “(2) BOND.—The term ‘bond’ includes any ob-  
22 ligation.

23           “(3) NET SPENDABLE PROCEEDS.—The term  
24 ‘net spendable proceeds’ means the proceeds from  
25 the sale of any Build America bond issued under

1 this section reduced by not more than 5 percent of  
2 such proceeds for administrative costs.

3 “(4) STATE.—The term ‘State’ shall have the  
4 meaning given such term by section 101 of title 23,  
5 United States Code.

6 “(5) TREATMENT OF CHANGES IN USE.—For  
7 purposes of subsection (e)(1)(A), the net spendable  
8 proceeds from the sale of an issue shall not be treat-  
9 ed as used for a qualified project to the extent that  
10 the Transportation Finance Corporation takes any  
11 action within its control which causes such proceeds  
12 not to be used for a qualified project. The Secretary  
13 shall specify remedial actions which may be taken  
14 (including conditions to taking such remedial ac-  
15 tions) to prevent an action described in the pre-  
16 ceding sentence from causing a bond to fail to be a  
17 Build America bond.

18 “(6) PARTNERSHIP; S CORPORATION; AND  
19 OTHER PASS-THRU ENTITIES.—In the case of a  
20 partnership, trust, S corporation, or other pass-thru  
21 entity, rules similar to the rules of section 41(g)  
22 shall apply with respect to the credit allowable under  
23 subsection (a).

24 “(7) BONDS HELD BY REGULATED INVEST-  
25 MENT COMPANIES.—If any Build America bond is

1 held by a regulated investment company, the credit  
2 determined under subsection (a) shall be allowed to  
3 shareholders of such company under procedures pre-  
4 scribed by the Secretary.

5 “(8) CREDITS MAY BE STRIPPED.—Under regu-  
6 lations prescribed by the Secretary—

7 “(A) IN GENERAL.—There may be a sepa-  
8 ration (including at issuance) of the ownership  
9 of a Build America bond and the entitlement to  
10 the credit under this section with respect to  
11 such bond. In case of any such separation, the  
12 credit under this section shall be allowed to the  
13 person who on the credit allowance date holds  
14 the instrument evidencing the entitlement to  
15 the credit and not to the holder of the bond.

16 “(B) CERTAIN RULES TO APPLY.—In the  
17 case of a separation described in subparagraph  
18 (A), the rules of section 1286 shall apply to the  
19 Build America bond as if it were a stripped  
20 bond and to the credit under this section as if  
21 it were a stripped coupon.

22 “(9) CREDITS MAY BE TRANSFERRED.—Noth-  
23 ing in any law or rule of law shall be construed to  
24 limit the transferability of the credit or bond allowed

1 by this section through sale and repurchase agree-  
2 ments.

3 “(10) REPORTING.—The Transportation Fi-  
4 nance Corporation shall submit reports similar to  
5 the reports required under section 149(e).

6 “(11) PROHIBITION ON USE OF HIGHWAY  
7 TRUST FUND.—Notwithstanding any other provision  
8 of law, no funds derived from the Highway Trust  
9 Fund established under section 9503 shall be used  
10 to pay costs associated with the Build America  
11 bonds issued under this section.”.

12 (b) AMENDMENTS TO OTHER CODE SECTIONS.—

13 (1) REPORTING.—Subsection (d) of section  
14 6049 (relating to returns regarding payments of in-  
15 terest) is amended by adding at the end the fol-  
16 lowing new paragraph:

17 “(8) REPORTING OF CREDIT ON BUILD AMER-  
18 ICA BONDS.—

19 “(A) IN GENERAL.—For purposes of sub-  
20 section (a), the term ‘interest’ includes amounts  
21 includible in gross income under section 54(d)  
22 and such amounts shall be treated as paid on  
23 the credit allowance date (as defined in section  
24 54(b)(4)).

1           “(B) REPORTING TO CORPORATIONS,  
2           ETC.—Except as otherwise provided in regula-  
3           tions, in the case of any interest described in  
4           subparagraph (A), subsection (b)(4) shall be  
5           applied without regard to subparagraphs (A),  
6           (H), (I), (J), (K), and (L)(i) of such subsection.

7           “(C) REGULATORY AUTHORITY.—The Sec-  
8           retary may prescribe such regulations as are  
9           necessary or appropriate to carry out the pur-  
10          poses of this paragraph, including regulations  
11          which require more frequent or more detailed  
12          reporting.”.

13          (2) TREATMENT FOR ESTIMATED TAX PUR-  
14          POSES.—

15                 (A) INDIVIDUAL.—Section 6654 (relating  
16                 to failure by individual to pay estimated income  
17                 tax) is amended by redesignating subsection  
18                 (m) as subsection (n) and by inserting after  
19                 subsection (l) the following new subsection:

20                 “(m) SPECIAL RULE FOR HOLDERS OF BUILD  
21                 AMERICA BONDS.—For purposes of this section, the credit  
22                 allowed by section 54 to a taxpayer by reason of holding  
23                 a Build America bond on a credit allowance date shall be  
24                 treated as if it were a payment of estimated tax made by  
25                 the taxpayer on such date.”.

1 (B) CORPORATE.—Subsection (g) of sec-  
 2 tion 6655 (relating to failure by corporation to  
 3 pay estimated income tax) is amended by add-  
 4 ing at the end the following new paragraph:

5 “(5) SPECIAL RULE FOR HOLDERS OF BUILD  
 6 AMERICA BONDS.—For purposes of this section, the  
 7 credit allowed by section 54 to a taxpayer by reason  
 8 of holding a Build America bond on a credit allow-  
 9 ance date shall be treated as if it were a payment  
 10 of estimated tax made by the taxpayer on such  
 11 date.”.

12 (c) CLERICAL AMENDMENTS.—

13 (1) The table of subparts for part IV of sub-  
 14 chapter A of chapter 1 is amended by adding at the  
 15 end the following new item:

“SUBPART H. NONREFUNDABLE CREDIT FOR HOLDERS OF BUILD AMERICA  
 BONDS.”.

16 (2) Section 6401(b)(1) is amended by striking  
 17 “and G” and inserting “G, and H”.

18 (d) EFFECTIVE DATE.—The amendments made by  
 19 this section shall apply to obligations issued after the date  
 20 of the enactment of this Act.

21 **SEC. 4. TRANSPORTATION FINANCE CORPORATION.**

22 (a) ESTABLISHMENT AND STATUS.—There is estab-  
 23 lished a body corporate to be known as the “Transpor-  
 24 tation Finance Corporation” (hereafter in this section re-

1 ferred to as the “Corporation”). The Corporation is not  
2 a department, agency, or instrumentality of the United  
3 States Government, and shall not be subject to title 31,  
4 United States Code.

5 (b) PRINCIPAL OFFICE; APPLICATION OF LAWS.—  
6 The principal office and place of business of the Corpora-  
7 tion shall be in the District of Columbia, and, to the extent  
8 consistent with this section, the District of Columbia Busi-  
9 ness Corporation Act (D.C. Code 29–301 et seq.) shall  
10 apply.

11 (c) FUNCTIONS OF CORPORATION.—The Corporation  
12 shall—

13 (1) issue Build America bonds for the financing  
14 of qualified projects as required under section 54 of  
15 the Internal Revenue Code of 1986,

16 (2) establish and operate the Build America  
17 Trust Account as required under section 54(j) of  
18 such Code,

19 (3) act as a centralized entity to provide financ-  
20 ing for qualified projects,

21 (4) leverage resources and stimulate public and  
22 private investment in transportation infrastructure,

23 (5) encourage States to create additional oppor-  
24 tunities for the financing of transportation infra-

1 structure and to provide technical assistance to  
2 States, if needed,

3 (6) perform any other function the sole purpose  
4 of which is to carry out the financing of qualified  
5 projects through Build America bonds, and

6 (7) not later than February 15 of each year  
7 submit a report to Congress—

8 (A) describing the activities of the Cor-  
9 poration for the preceding year, and

10 (B) specifying whether the amounts depos-  
11 ited and expected to be deposited in the Build  
12 America Trust Account are sufficient to fully  
13 repay at maturity the principal of any out-  
14 standing Build America bonds issued pursuant  
15 to such section 54.

16 (d) POWERS OF CORPORATION.—The Corporation—

17 (1) may sue and be sued, complain and defend,  
18 in its corporate name, in any court of competent ju-  
19 risdiction,

20 (2) may adopt, alter, and use a seal, which shall  
21 be judicially noticed,

22 (3) may prescribe, amend, and repeal such rules  
23 and regulations as may be necessary for carrying out  
24 the functions of the Corporation,

1           (4) may make and perform such contracts and  
2 other agreements with any individual, corporation,  
3 or other private or public entity however designated  
4 and wherever situated, as may be necessary for car-  
5 rying out the functions of the Corporation,

6           (5) may determine and prescribe the manner in  
7 which its obligations shall be incurred and its ex-  
8 penses allowed and paid,

9           (6) may, as necessary for carrying out the func-  
10 tions of the Corporation, employ and fix the com-  
11 pensation of employees and officers,

12           (7) may lease, purchase, or otherwise acquire,  
13 own, hold, improve, use, or otherwise deal in and  
14 with such property (real, personal, or mixed) or any  
15 interest therein, wherever situated, as may be nec-  
16 essary for carrying out the functions of the Corpora-  
17 tion,

18           (8) may accept gifts or donations of services or  
19 of property (real, personal, or mixed), tangible or in-  
20 tangible, in furtherance of the purposes of this Act,  
21 and

22           (9) shall have such other powers as may be nec-  
23 essary and incident to carrying out this Act.

24           (e) NONPROFIT ENTITY; RESTRICTION ON USE OF  
25 MONEYS; CONFLICT OF INTERESTS; AUDITS.—

1           (1) NONPROFIT ENTITY.—The Corporation  
2 shall be a nonprofit corporation and shall have no  
3 capital stock.

4           (2) RESTRICTION.—No part of the Corpora-  
5 tion’s revenue, earnings, or other income or property  
6 shall inure to the benefit of any of its directors, offi-  
7 cers, or employees, and such revenue, earnings, or  
8 other income or property shall only be used for car-  
9 rying out the purposes of this Act.

10           (3) CONFLICT OF INTERESTS.—No director, of-  
11 ficer, or employee of the Corporation shall in any  
12 manner, directly or indirectly participate in the de-  
13 liberation upon or the determination of any question  
14 affecting his or her personal interests or the inter-  
15 ests of any corporation, partnership, or organization  
16 in which he or she is directly or indirectly interested.

17           (4) AUDITS.—

18                   (A) AUDITS BY INDEPENDENT CERTIFIED  
19 PUBLIC ACCOUNTANTS.—

20                           (i) IN GENERAL.—The Corporation’s  
21 financial statements shall be audited annu-  
22 ally in accordance with generally accepted  
23 auditing standards by independent certified  
24 public accountants that are certified by a  
25 regulatory authority of a State or other po-

1           litical subdivision of the United States.  
2           The audits shall be conducted at the place  
3           or places where the accounts of the Cor-  
4           poration are normally kept. All books, ac-  
5           counts, financial records, reports, files, and  
6           all other papers, things, or property be-  
7           longing to or in use by the Corporation  
8           and necessary to facilitate the audit shall  
9           be made available to the person or persons  
10          conducting the audits, and full facilities for  
11          verifying transactions with the balances or  
12          securities held by depositories, fiscal  
13          agents, and custodians shall be afforded to  
14          such person or persons.

15                 (ii) REPORTING REQUIREMENTS.—  
16          The report of each annual audit described  
17          in clause (i) shall be included in the annual  
18          report required by subsection (c)(8).

19                 (B) RECORD KEEPING REQUIREMENTS.—  
20          The Corporation shall ensure that each recipi-  
21          ent of assistance from the Corporation keeps—

22                         (i) separate accounts with respect to  
23                         such assistance,

24                         (ii) such records as may be reasonably  
25                         necessary to fully disclose—

1 (I) the amount and the disposi-  
2 tion by such recipient of the proceeds  
3 of such assistance,

4 (II) the total cost of the project  
5 or undertaking in connection with  
6 which such assistance is given or  
7 used, and the extent to which such  
8 costs are for a qualified project, and

9 (III) the amount and nature of  
10 that portion of the cost of the project  
11 or undertaking supplied by other  
12 sources, and

13 (iii) such other records as will facili-  
14 tate an effective audit.

15 (C) AUDIT AND EXAMINATION OF  
16 BOOKS.—The Corporation shall ensure that the  
17 Corporation, or any of the Corporation's duly  
18 authorized representatives, shall have access for  
19 the purpose of audit and examination to any  
20 books, documents, papers, and records of any  
21 recipient of assistance from the Corporation  
22 that are pertinent to such assistance.

23 (f) EXEMPTION FROM TAXES.—

24 (1) IN GENERAL.—The Corporation, including  
25 its franchise, capital, reserves, surplus, sinking

1 funds, mortgages or other security holdings, and in-  
2 come, shall be exempt from all taxation now or here-  
3 after imposed by the United States, by any territory,  
4 dependency, or possession thereof, or by any State,  
5 county, municipality, or local taxing authority, ex-  
6 cept that any real property of the Corporation shall  
7 be subject to State, territorial, county, municipal, or  
8 local taxation to the same extent according to its  
9 value as other real property is taxed.

10 (2) FINANCIAL OBLIGATIONS.—Build America  
11 bonds or other obligations issued by the Corporation  
12 and the interest on or tax credits with respect to its  
13 bonds or other obligations shall not be subject to  
14 taxation by any State, county, municipality, or local  
15 taxing authority.

16 (g) ASSISTANCE FOR TRANSPORTATION PUR-  
17 POSES.—

18 (1) IN GENERAL.—In order to carry out the  
19 corporate functions described in subsection (c), the  
20 Corporation shall be eligible to receive discretionary  
21 grants, contracts, gifts, contributions, or technical  
22 assistance from any Federal department or agency,  
23 to the extent permitted by law.

24 (2) AGREEMENT.—In order to receive any as-  
25 sistance described in this subsection, the Corpora-

1       tion shall enter into an agreement with the Federal  
2       department or agency providing such assistance,  
3       under which the Corporation agrees—

4               (A) to use such assistance to provide fund-  
5       ing and technical assistance only for activities  
6       which the Board of Directors of the Corpora-  
7       tion determines are consistent with the cor-  
8       porate functions described in subsection (c),  
9       and

10              (B) to review the activities of State trans-  
11       portation agencies and other entities receiving  
12       assistance from the Corporation to assure that  
13       the corporate functions described in subsection  
14       (c) are carried out.

15              (3) CONSTRUCTION.—Nothing in this section  
16       shall be construed to establish the Corporation as a  
17       department, agency, or instrumentality of the United  
18       States Government, or to establish the members of  
19       the Board of Directors of the Corporation, or the of-  
20       ficers and employees of the Corporation, as officers  
21       or employees of the United States Government.

22       (h) MANAGEMENT OF CORPORATION.—

23              (1) BOARD OF DIRECTORS; MEMBERSHIP; DES-  
24       IGNATION OF CHAIRPERSON AND VICE CHAIR-

1 PERSON; APPOINTMENT CONSIDERATIONS; TERM;  
2 VACANCIES.—

3 (A) BOARD OF DIRECTORS.—The manage-  
4 ment of the Corporation shall be vested in a  
5 board of directors composed of 15 members ap-  
6 pointed by the President, by and with the ad-  
7 vice and consent of the Senate.

8 (B) CHAIRPERSON AND VICE CHAIR-  
9 PERSON.—The President shall designate 1  
10 member of the Board to serve as Chairperson  
11 of the Board and 1 member to serve as Vice  
12 Chairperson of the Board.

13 (C) INDIVIDUALS FROM PRIVATE LIFE.—  
14 Eleven members of the Board shall be ap-  
15 pointed from private life.

16 (D) FEDERAL OFFICERS AND EMPLOY-  
17 EES.—Four members of the Board shall be ap-  
18 pointed from among officers and employees of  
19 agencies of the United States concerned with  
20 infrastructure development.

21 (E) APPOINTMENT CONSIDERATIONS.—All  
22 members of the Board shall be appointed on the  
23 basis of their understanding of and sensitivity  
24 to infrastructure development processes. Mem-  
25 bers of the Board shall be appointed so that not

1 more than 8 members of the Board are mem-  
2 bers of any 1 political party.

3 (F) TERMS.—Members of the Board shall  
4 be appointed for terms of 3 years, except that  
5 of the members first appointed, as designated  
6 by the President at the time of their appoint-  
7 ment, 5 shall be appointed for terms of 1 year  
8 and 5 shall be appointed for terms of 2 years.

9 (G) VACANCIES.—A member of the Board  
10 appointed to fill a vacancy occurring before the  
11 expiration of the term for which that member's  
12 predecessor was appointed shall be appointed  
13 only for the remainder of that term. Upon the  
14 expiration of a member's term, the member  
15 shall continue to serve until a successor is ap-  
16 pointed and is qualified.

17 (2) COMPENSATION, ACTUAL, NECESSARY, AND  
18 TRANSPORTATION EXPENSES.—Members of the  
19 Board shall serve without additional compensation,  
20 but may be reimbursed for actual and necessary ex-  
21 penses not exceeding \$100 per day, and for trans-  
22 portation expenses, while engaged in their duties on  
23 behalf of the Corporation.

24 (3) QUORUM.—A majority of the Board shall  
25 constitute a quorum.

1           (4) PRESIDENT OF CORPORATION.—The Board  
2           of Directors shall appoint a president of the Cor-  
3           poration on such terms as the Board may determine.

○