

111TH CONGRESS
1ST SESSION

S. 791

To direct the Secretary of Transportation to carry out programs and activities to improve highway safety.

IN THE SENATE OF THE UNITED STATES

APRIL 2, 2009

Mr. BAUCUS introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To direct the Secretary of Transportation to carry out programs and activities to improve highway safety.

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 “Surface Transpor-
5 tation Safety Act of 2009”.

6 **SEC. 2. WORKER INJURY PREVENTION AND FREE FLOW OF**
7 **VEHICULAR TRAFFIC.**

8 The Secretary of Transportation shall modify regula-
9 tions issued pursuant to section 1402 of the Safe, Ac-
10 countable, Flexible, Efficient Transportation Equity Act:

1 A Legacy for Users (23 U.S.C. 401 note; 119 Stat. 1227)
2 to allow fire services personnel that are subject to the reg-
3 ulations to wear apparel meeting the high visibility re-
4 quirements set forth in NFPA 1971–2007 (Standard on
5 Protective Ensembles for Structural Fire Fighting and
6 Proximity Fire Fighting) in lieu of apparel meeting the
7 requirements set forth in ANSI/ISEA 107–2004.

8 **SEC. 3. POSITIVE PROTECTIVE DEVICES.**

9 Not later than 60 days after the date of enactment
10 of this Act, the Secretary of Transportation shall modify
11 section 630.1108(a) of title 23, Code of Federal Regula-
12 tions, to ensure that—

13 (1) at a minimum, positive protective measures
14 are used to separate workers on highway construc-
15 tion projects from motorized traffic in all work zones
16 conducted under traffic in areas that offer workers
17 no means of escape (e.g., tunnels, bridges, etc.), un-
18 less an engineering analysis determines otherwise;

19 (2) temporary longitudinal traffic barriers are
20 used to protect workers on highway construction
21 projects in stationary work zones lasting 2 weeks or
22 more when the project design speed is 45 miles per
23 hour or greater and the nature of the work requires
24 workers to be within one lane-width from the edge
25 of a live travel lane, unless—

1 (A) an engineering analysis determines
2 otherwise, or

3 (B) the project is located in a State with
4 a population density of 20 or fewer persons per
5 square mile and the project is outside of an ur-
6 banized area and the road's annual average
7 daily traffic (AADT) load is less than 100 vehi-
8 cles per hour; and

9 (3) when positive protective devices are nec-
10 essary for highway construction projects, these de-
11 vices are paid for on a unit pay basis, unless doing
12 so would create a conflict with innovative con-
13 tracting approaches, such as design-build or some
14 performance-based contracts where the contractor is
15 paid to assume a certain risk allocation and payment
16 is generally made on a lump sum basis.

17 **SEC. 4. USE OF PATENTED OR PROPRIETARY ITEMS TO**
18 **FURTHER STATE STRATEGIC HIGHWAY SAFE-**
19 **TY PLANS.**

20 Section 112 of title 23, United States Code, is
21 amended by adding at the end the following:

22 “(h) USE OF PATENTED OR PROPRIETARY ITEMS TO
23 FURTHER STATE STRATEGIC HIGHWAY SAFETY
24 PLANS.—

1 “(1) The Secretary shall approve the use of
2 Federal funds made available to carry out this chap-
3 ter in the payment of patented or proprietary items
4 if the State transportation department certifies,
5 based on the documented analysis and professional
6 judgment of qualified State transportation officials,
7 that—

8 “(A) the patented or proprietary item will
9 contribute to the accomplishment of one or
10 more goals set forth in the State’s strategic
11 highway safety plan;

12 “(B) no equally suitable alternative item
13 exists;

14 “(C) any specified patented or proprietary
15 item will be clearly identified as a patented or
16 proprietary item in bid documents; and

17 “(D) any patented or proprietary item
18 specified pursuant to this certification will be
19 available in sufficient quantity to complete any
20 project identified in bid documents.

21 “(2) The authority to utilize patented or propri-
22 etary items provided in paragraph (1) is in addition
23 to authority to utilize such products that exists
24 under this section and under 23 CFR 635.411 as in
25 effect on March 2, 2009. The Secretary may not re-

1 vise said regulation to reduce authority to utilize
2 patented or proprietary items.”.

3 **SEC. 5. MINIMUM LEVEL OR RETROREFLECTIVITY FOR**
4 **PAVEMENT MARKINGS.**

5 Not later than October 1, 2010, the Secretary of
6 Transportation shall revise the Manual on Uniform Traf-
7 fic Control Devices to include a standard for a minimum
8 level of retroreflectivity that must be maintained for pave-
9 ment markings, which shall apply to all roads open to pub-
10 lic travel.

11 **SEC. 6. HIGHWAY SAFETY IMPROVEMENT PROGRAM.**

12 (a) HIGHWAY SIGNS AND PAVEMENT MARKINGS.—
13 Section 148(a)(3)(B)(xi) of title 23, United States Code,
14 is amended to read as follows:

15 “(xi) Installation, replacement, and
16 upgrade of highway signs and pavement
17 markings, including any upgrade of mate-
18 rials and the implementation of any assess-
19 ment or management method designed to
20 meet a State-established performance
21 standard, Federal regulation, or require-
22 ment contained in the Manual on Uniform
23 Traffic Control Devices relating to min-
24 imum levels of retroreflectivity.”.

1 (b) MAINTAINING MINIMUM LEVELS OF
2 RETROREFLECTIVITY.—

3 (1) 23 U.S.C. 148(a) is amended by adding at
4 the end thereof the following paragraph—

5 “(7) PROJECT TO MAINTAIN MINIMUM LEVELS
6 OF RETROREFLECTIVITY.—The term ‘project to
7 maintain minimum levels of retroreflectivity’ means
8 a project undertaken pursuant to provisions of the
9 Manual on Uniform Traffic Control Devices requir-
10 ing public agencies to use an assessment or manage-
11 ment method that is designed to maintain highway
12 sign or pavement marking retroreflectivity at or
13 above prescribed minimum levels.”.

14 (2) 23 U.S.C. 148(d)(1) is amended by striking
15 “(B)” and inserting in lieu thereof “(C)” and by in-
16 serting between subparagraphs (A) and (C), as re-
17 designated herein, the following—

18 “(B) any project to maintain minimum lev-
19 els of retroreflectivity on any public road,
20 whether or not such project is included in the
21 State strategic highway safety plan; or”.

22 (3) 23 U.S.C. 120(c)(1) is amended by insert-
23 ing after “signalization,” the following:

24 “maintaining minimum levels of retroreflectivity of
25 highway signs or pavement markings,”.

1 **SEC. 7. ROADWAY SAFETY IMPROVEMENT PROGRAM FOR**
2 **OLDER DRIVERS AND PEDESTRIANS.**

3 (a) IN GENERAL.—The Secretary of Transportation
4 shall carry out a program to improve traffic signs and
5 pavement markings in all States (as such term is defined
6 in section 101 of title 23, United States Code) in a manner
7 consistent with the recommendations included in the pub-
8 lication of the Federal Highway Administration entitled
9 “Guidelines and Recommendations to Accommodate Older
10 Drivers and Pedestrians (FHWA–RD–01–103)” and
11 dated October 2001.

12 (b) APPORTIONMENT OF FUNDS.—On October 1 of
13 each fiscal year, the Secretary shall apportion sums au-
14 thorized to be appropriated to carry out this section for
15 such fiscal year among the several States using the overall
16 formula share for each State for fiscal year 2009 for all
17 funds subject to section 105 of title 23, United States
18 Code, including equity bonus funds, obtained after appli-
19 cation of said section 105 for such fiscal year.

20 (c) FEDERAL SHARE.—The Federal share of the cost
21 of a project carried out under this section shall be deter-
22 mined in accordance with section 120 of title 23, United
23 States Code.

24 (d) AUTHORIZATION OF APPROPRIATIONS.—There is
25 authorized to be appropriated out of the Highway Trust
26 Fund (other than the Mass Transit Account) \$90,000,000

1 to carry out this section for each of fiscal years 2010
2 through 2014.

3 (e) APPLICABILITY OF TITLE 23.—Funds made
4 available to carry out this section shall be available for
5 obligation in the same manner as if such funds were ap-
6 portioned under chapter 1 of title 23, United States Code.

7 **SEC. 8. RAIL-HIGHWAY GRADE CROSSINGS.**

8 (a)(1) TRANSPARENCY OF STATE SURVEY AND
9 SCHEDULE OF RAILWAY-HIGHWAY GRADE CROSSINGS.—
10 Section 130(d) of title 23, United States Code, is amended
11 by adding at the end the following: “Each State shall
12 make surveys and schedules compiled under this sub-
13 section available to the public through the Internet Web
14 site of the State.”.

15 (2) The effective date of this subsection shall be 180
16 days after the date of enactment of this subsection.

17 (b) AUTHORIZATION OF APPROPRIATIONS.—There is
18 authorized to be appropriated out of the Highway Trust
19 Fund (other than the Mass Transit Account) to carry out
20 section 130 of title 23, United States Code, \$220,000,000
21 for each of fiscal years 2010 through 2014.

22 (c) CONFORMING AMENDMENTS.—Section 130 of
23 title 23, United States Code, is amended—

24 (1) in subsection (e)(1) by striking the first
25 sentence; and

1 (2) in subsections (f)(1) and (f)(3) by striking
2 “set aside” and inserting “made available”.

3 **SEC. 9. REVIEW OF SAFETY OF RAIL-HIGHWAY GRADE**
4 **CROSSINGS.**

5 (a) IN GENERAL.—The Secretary of Transportation
6 shall conduct a comprehensive review of the safety of all
7 highway-rail grade crossings in the United States.

8 (b) METHOD.—In reviewing the safety of a highway-
9 rail grade crossing under subsection (a), the Secretary
10 shall—

11 (1) assess, at a minimum, safety conditions, av-
12 erage daily traffic, proximity to schools, past acci-
13 dents, fatalities, and possible safety improvements;
14 and

15 (2) determine the best method for making the
16 crossing safer, including closings, grade separations,
17 installation of protective devices, or other methods.

18 (c) PRIORITY LIST.—Based on the information col-
19 lected in conducting the comprehensive review under sub-
20 section (a), the Secretary shall compile, maintain, and
21 submit to Congress a list of the 10 highway-rail grade
22 crossings in each State that have the greatest need for
23 safety improvements.

24 (d) INCLUSION IN RAIL-HIGHWAY GRADE CROSSING
25 DATABASE.—The Secretary shall include the information

1 collected in conducting the comprehensive review under
2 subsection (a), and the priority list submitted under sub-
3 section (c), in the national database on the safety of high-
4 way-rail grade crossings required under section 20156(a)
5 of title 49, United States Code, as added by section 10
6 of this Act.

7 (e) UPDATE.—The Secretary shall update the com-
8 prehensive review under subsection (a) at least once every
9 4 years.

10 (f) AVAILABILITY OF INFORMATION.—The Secretary
11 shall make priority lists and databases compiled under this
12 section available to the public through the Internet Web
13 site of the Department of Transportation.

14 (g) LIMITATION ON USE OF DATA IN JUDICIAL PRO-
15 CEEDINGS.—Notwithstanding any other provision of law,
16 any report, review, survey, schedule, list, data, or informa-
17 tion or document of any kind compiled or collected pursu-
18 ant to this section, including but not limited to for the
19 purpose of identifying, evaluating, or planning the safety
20 enhancement of a potential accident site or railway-high-
21 way crossing pursuant to this section shall not be subject
22 to discovery or admitted into evidence in a Federal or
23 State court proceeding or considered for other purposes
24 in any action for damages arising from any occurrence at

1 a location mentioned or addressed in such report, review,
 2 survey, schedule, list, or data.

3 **SEC. 10. RAIL-HIGHWAY GRADE CROSSING SAFETY.**

4 (a) HIGHWAY-RAIL GRADE CROSSING SAFETY.—
 5 Subchapter II of chapter 201 of title 49, United States
 6 Code, is amended by adding at the end the following:

7 **“SEC. 20156. RAIL-HIGHWAY GRADE CROSSING SAFETY IN-**
 8 **FORMATION.**

9 “(a) ESTABLISHMENT OF DATABASE.—The Sec-
 10 retary of Transportation shall establish and maintain a
 11 national database of information on the safety of highway-
 12 rail grade crossings in the United States.

13 “(b) ACCIDENT AND INCIDENT REPORTS TO BE IN-
 14 CLUDED IN DATABASE.—The Secretary shall include in
 15 the database under subsection (a) information from inci-
 16 dent reports filed with the Federal Railroad Administra-
 17 tion regarding accidents and other safety-related incidents
 18 that have occurred at highway-rail grade crossings.”.

19 (b) CLERICAL AMENDMENT.—The analysis for sub-
 20 chapter II of such chapter is amended by adding at the
 21 end the following:

“20156. Rail-highway grade crossing safety information.”.

22 **SEC. 11. RURAL STATE INITIATIVE.**

23 (a) IN GENERAL.—To address the problem of a sig-
 24 nificant portion of traffic fatalities occurring on highways
 25 in rural areas, the Secretary of Transportation shall, for

1 each fiscal year beginning with fiscal year 2010, allocate
2 \$20 million to each State with a population density of less
3 than 20 persons per square mile (based on the most recent
4 decennial census), for use by such States for projects
5 and programs and activities eligible under 23 U.S.C. 148
6 and not located in an urbanized area as defined in section
7 134(b)(6), title 23, United States Code.

8 (b) Such allocations shall not be considered an appor-
9 tionment within the meaning of section 105 of title 23,
10 United States Code, or considered a “specific program”
11 within the meaning of said section 105.

12 (c) FEDERAL SHARE.—The Federal share of the cost
13 of a project carried out under this section shall be deter-
14 mined in accordance with section 120 of title 23, United
15 States Code.

16 (d) AUTHORIZATION OF APPROPRIATIONS.—There is
17 authorized to be appropriated out of the Highway Trust
18 Fund (other than the Mass Transit Account) such sums
19 as may be necessary to carry out this section for each of
20 fiscal years 2010 through 2014.

21 (e) APPLICABILITY OF TITLE 23.—Except as pro-
22 vided by subsection (b) of this section, funds made avail-
23 able to carry out this section shall be available for obliga-

1 tion in the same manner as if such funds were apportioned
2 under chapter 1 of title 23, United States Code.

○