S. 1193

To amend title 23, United States Code, to preserve and renew Federal-aid highways to reduce long-term costs, improve safety, and improve the condition of Federal-aid highways.

IN THE SENATE OF THE UNITED STATES

JUNE 14, 2011

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

A BILL

To amend title 23, United States Code, to preserve and renew Federal-aid highways to reduce long-term costs, improve safety, and improve the condition of Federal-aid highways.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Federal-Aid Highway Preservation and Renewal Program Act of 2011”.

SEC. 2. SYSTEM PRESERVATION AND RENEWAL PROGRAM.

(a) In General.—Section 119 of title 23, United States Code, is amended to read as follows:
§ 119. System preservation and renewal program

“(a) DEFINITIONS.—In this section:

“(1) ASSET MANAGEMENT.—The term ‘asset management’ means a strategic process for the management of transportation infrastructure that takes into consideration economic and engineering factors to make cost-effective investment decisions to improve the overall state of good repair of facilities.

“(2) ELIGIBLE COST.—The term ‘eligible cost’ means, with respect to costs incurred for a project, costs of—

“(A) development and implementation of asset management systems in support of system preservation and renewal plans;

“(B) inspection activities for highway bridges and tunnels in the State;

“(C) reducing or eliminating an identified highway or bridge safety problem;

“(D) training of personnel responsible for inspection of highway tunnels and inspection and load rating of highway bridges in the State;

“(E) data collection to monitor the condition of highways and highway bridges in the State;
“(F) environmental restoration and pollution abatement to offset or mitigate the impacts of a project eligible under subparagraph (A);

“(G) control of terrestrial and aquatic noxious weeds and establishment of non-native plant species within the limits of a project eligible under subparagraph (A); and

“(H) implementation of the policy established pursuant to subsection (l)(1).

“(3) ELIGIBLE HIGHWAY FACILITY.—The term ‘eligible highway facility’ means—

“(A) a highway located on a Federal-aid highway;

“(B) a bridge located on a Federal-aid highway;

“(C) a bridge not located on a Federal-aid highway; and

“(D) a bicycle or pedestrian lane, path, walkway, or similar travel surface located within the right-of-way of a Federal-aid highway.

“(4) ELIGIBLE PROJECT.—The term ‘eligible project’ means a project that is—

“(A)(i) a project for resurfacing, restoration, rehabilitation, replacement, or reconstruction of an eligible highway facility;
“(ii) a project for preservation, protection,
or other preventive repair of an eligible highway
facility; or
“(iii) a project to reduce or eliminate an
identified highway safety problem, if the
project—
“(I) is eligible under section 148; and
“(II) has a cost of less than
$10,000,000; and
“(B) consistent with the investment strat-
egy of the State in which the project is to be
carried out.
“(5) INVESTMENT STRATEGY.—The term ‘in-
vestment strategy’ means a State investment strat-
egy established under subsection (h)(2)(B).
“(6) OVERALL STATE OF GOOD REPAIR STAN-
dards.—The term ‘overall state of good repair stand-
ards’ means the performance standards established
under subsection (f)(1)(B).
“(7) PRESERVATION.—
“(A) IN GENERAL.—The term ‘preserva-
tion’ means any cost-effective activity to pre-
vent, delay, or reduce deterioration on an eligi-
ble highway facility, including preventive and
corrective actions.
“(B) EXCLUSION.—The term ‘preservation’ does not include structural or operational improvement beyond the originally designed traffic capacity of an existing highway facility except to the extent the improvement occurs as an incidental result of the preservation activity or improves safety.

“(8) PROGRAM.—The term ‘program’ means the system preservation and renewal program established under subsection (b).

“(9) PROTECTION.—The term ‘protection’, with respect to a highway, means the conduct of an activity or action associated with the design and construction of measures to protect highways from hazards such as earthquakes, floods, scour, icing, vessel collision, vehicular impact, and security threats.

“(10) STATE OF GOOD REPAIR PERFORMANCE TARGET.—The term ‘state of good repair performance target’ means a performance target established under subsection (f)(2).

“(11) SYSTEM PRESERVATION AND RENEWAL FUNDS.—The term ‘system preservation and renewal funds’ means funds apportioned under sections 104(b)(4), 104(m), and 144(e) for the program.
“(12) System preservation and renewal plan.—The term ‘system preservation and renewal plan’ means a system preservation and renewal plan established by a State under subsection (h).

“(b) Establishment.—The Secretary shall establish and implement a surface transportation infrastructure preservation and renewal program designed to maintain and preserve the quality, efficiency, safety, and value of Federal-aid highways and Federal-aid and non-Federal-aid bridges in accordance with this section.

“(c) Purposes.—The purposes of the program shall be—

“(1) to establish national priorities and goals for bringing Federal-aid highways and Federal-aid and non-Federal-aid bridges into a state of good repair and preserving that state of good repair;

“(2) to focus Federal investment on preserving and improving the condition of roadways and bridges; and

“(3) to strengthen the connection between the use by a State of Federal surface transportation funding and the accomplishment of performance outcomes.

“(d) Use of apportioned funds.—
“(1) IN GENERAL.—A State may obligate funds apportioned to the State under the program for—

“(A) eligible projects; and

“(B) eligible costs.

“(2) PRIORITY FOR NATIONAL HIGHWAY SYSTEM PROJECTS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), a State shall give priority to eligible projects that help meet the overall state of good repair standards for the National Highway System under subsection (f)(1)(B).

“(B) EXCEPTION.—This paragraph shall not apply to any State that is meeting the overall state of good repair standards for the National Highway System established under subsection (f)(1)(B), as determined by the Secretary.

“(3) LIMITATION.—

“(A) IN GENERAL.—A project cost attributable to expansion of the capacity of a highway located on a Federal-aid highways shall not be eligible for funding under this section if the new capacity consists of 1 or more new travel lanes that are not auxiliary lanes.

“(B) NON-FEDERAL-AID BRIDGES.—
“(i) IN GENERAL.—Not less than 15 percent of the amount apportioned to each State under section 144(e) for each of fiscal years 2012 through 2017 shall be expended for projects to preserve, rehabilitate, protect, or replace highway bridges, other than those bridges on Federal-aid highways.

“(ii) REDUCTION IN EXPENDITURES.—The Secretary, after consultation with State and local officials, may reduce the amount required to be expended under clause (i) for bridges in the State that are not located on a Federal-aid highway if the Secretary determines that the State has inadequate needs to justify the expenditure.

“(4) EXCEPTION.—

“(A) DEBT FINANCING INSTRUMENTS.—Prior to the apportionment of funds made available for a program, a State may deduct amounts sufficient for the payment of any debt-financing instruments committed, guaranteed, or obligated to a third party before the date of enactment of the Federal-Aid Highway Preservation and Renewal Program Act of 2011 for
eligible projects under this title (including this section) and title 49.

“(B) Defense base closure and realignment impacts.—Before October 1, 2013, a State may use up to 25 percent of the funds of the State for system preservation and renewal for projects to address transportation impacts relating to decisions of the Defense Base Closure and Realignment Commission.

“(e) Other eligible costs.—In addition to the funds obligated for eligible projects, a State may obligate, in the aggregate, not to exceed 5 percent of the funds apportioned to the State under the program for a fiscal year to pay other eligible costs.

“(f) System preservation and renewal performance standards and targets.—

“(1) Secretary responsibilities.—Not later than 1 year after the date of enactment of the Federal-Aid Highway Preservation and Renewal Program Act of 2011, the Secretary shall, by regulation and in consultation with States, establish—

“(A) criteria for determining the state of good repair of eligible highway facilities, based on highway pavement condition or bridge structural adequacy, as applicable; and
“(B) overall state of good repair standards for each class of infrastructure described in paragraph (3), based on the criteria established under subparagraph (A).

“(2) STATE RESPONSIBILITIES.—Not later than 2 years after the date of enactment of the Federal-Aid Highway Preservation and Renewal Program Act of 2011, and every 2 years thereafter, each State, in conjunction with the development of the system preservation and renewal plan of the State, shall establish or revise, for each class of infrastructure described in paragraph (3), quantifiable State of good repair performance targets that, at a minimum, estimate the projected percentage change over a 2-year period of infrastructure that is rated as being not in state of good repair based on the criteria established under paragraph (1)(B).

“(3) CLASSES OF INFRASTRUCTURE.—The classes of infrastructure referred to in paragraph (1) are—

“(A) the total deck area of highway bridges in a State that are located on the National Highway System;
“(B) the total deck area of highway bridges in a State that are located on Federal-aid highways;

“(C) the total lane miles in a State that are located on the National Highway System; and

“(D) the total lane miles in a State that are located on Federal-aid highways.

“(4) COMPLIANCE.—If a State meets an overall state of good repair standard established under paragraph (1)(B) for a class of infrastructure described in paragraph (3), that class of infrastructure in the State shall be considered to be in a state of good repair.

“(5) APPLICABILITY.—No State shall be required to establish state of good repair performance targets under paragraph (2) for any class of infrastructure that a State certifies as meeting the overall state of good repair standard under paragraph (1)(B).

“(g) STATE ASSET MANAGEMENT PROCESS.—

“(1) IN GENERAL.—Not later than 1 year after the date of enactment of the Federal-Aid Highway Preservation and Renewal Program Act of 2011, a State shall develop an asset management process to
support the development and implementation of system preservation and renewal plans under subsection (h).

“(2) REQUIREMENTS.—The process developed under paragraph (1) shall be based on analytical mechanisms to identify cost-effective investments to preserve, rehabilitate, restore, resurface, reconstruct, protect, or replace Federal-aid highways and highway bridges on Federal-aid highways to improve the overall state of good repair of those highways and bridges.

“(h) STATE SYSTEM PRESERVATION AND RENEWAL PLANS.—

“(1) SUBMISSION OF PLANS.—Not later than 2 years after the date of enactment of the Federal-Aid Highway Preservation and Renewal Program Act of 2011 and biennially thereafter, a State shall develop or update, as applicable, and submit to the Secretary for approval, a system preservation and renewal plan.

“(2) PLAN REQUIREMENTS.—A system preservation plan of a State and any update of such a plan shall—

“(A) include documentation on the state of good repair based on the criteria under para-
graph (f)(1) and each class of infrastructure described in subsection (f)(3);

“(B) include an investment strategy that—

“(i) covers a period of 6 years; and

“(ii) describes the manner in which the State will allocate funds apportioned to the State to carry out this section among, at a minimum—

“(I) facilities in good condition, fair condition, and poor condition;

“(II) projects located on each class of infrastructure described in subsection (f)(2);

“(III) projects that vary with respect to geographical location, as determined by the State; and

“(IV) other eligible costs;

“(iii) is based on an asset management process under subsection (g);

“(iv) describes any Federal, State, local, or private funds that the State plans to use, in addition to system preservation and renewal funds, on projects that would help to meet the state of good repair per-
formance targets established under this section;

“(v) indicates the number of lane miles of highways and quantity of deck area on highway bridges that the State would address through the allocations described in clause (ii); and

“(vi) subject to subsection (d)(2), provides for investment in projects that, once completed, would allow the State to meet the applicable state of good repair performance targets;

“(C) include a description of the extent to which the use by the State of system preservation and renewal funds apportioned to the State during the 2 most recent fiscal years was consistent with the investment strategy of the State, including—

“(i) an identification of the number of lane miles of highways and quantity of deck area on highway bridges on which the State has used those funds during those 2 fiscal years;

“(ii) an identification of the distribution of highway and bridge facilities, by
level of ownership (Federal, State, tribal,
and local) and by functional classification,
on which the State has obligated those
funds during those 2 fiscal years;
“(iii) an assessment of the progress
that the State has made toward meeting
each of the state of good repair perform-
ance targets of the State based on the
projects that the State has carried out
under this section and the contribution
that those projects have made or would
make, once complete, to the State meeting
those performance targets; and
“(iv) a description of the expenditure
of funds on a geographical basis, as deter-
mined by the State; and
“(D) describe the manner in which the in-
vestment strategy of the State would enable the
State—
“(i) to meet the state of good repair
performance targets of the State; and
“(ii) improve the condition of the
classes of infrastructure described in sub-
section (f)(3) in the State.
“(3) Public availability of plan.—A State shall make the system preservation and renewal plan of the State, and each update of the plan, available to the public.

“(i) Failure to meet State of Good Repair Performance Targets.—

“(1) In general.—If a State does not meet the biennial system preservation and renewal performance targets under this section, the State shall coordinate with the Secretary to direct portions of Federal funds available under this title to the State toward projects eligible under this section in order to meet the state of good repair performance targets under this section.

“(2) Waiver.—The Secretary may temporarily waive the application of this subsection if—

“(A) unforeseen events significantly impact the ability of a State to meet the biennial state of good repair performance targets; or

“(B) eligible facilities under this section in the State have suffered serious damage due to an event that results in the declaration of—

“(i) an emergency by the Governor of the State; or
“(ii) a major disaster by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

“(j) OVERSIGHT.—Beginning for the third fiscal year after the date of enactment of the Federal-Aid Highway Preservation and Renewal Program Act of 2011, and at least biennially thereafter or at such other times or intervals as are determined to be necessary by the Secretary, the Secretary, in conjunction with the submission of the State system preservation and renewal plan under subsection (g), shall conduct oversight activities to assess whether the use by each State of funds under this section is consistent with the investment strategy of the State under this section.

“(k) BIENNIAL REPORT TO CONGRESS.—Not later than September 30, 2013, and biennially thereafter, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report containing—

“(1) an evaluation of the performance of each State with respect to—

“(A) the investment strategy of the State under this section; and
“(B) the system preservation and renewal performance targets established for the State under this section; and
“(2) such recommendations as the Secretary may provide for improvements of the program.
“(l) ADDITIONAL REQUIREMENTS.—
“(1) SAFE STREETS POLICY.—Not later than 2 years after the date of enactment of the Federal-Aid Highway Preservation and Renewal Program Act of 2011, each State shall develop a policy applicable to any project funded, in whole or in part, under the program that—
“(A) ensures the adequate accommodation, in all phases of project planning and development, of all users of the transportation system, including—
“(i) pedestrians;
“(ii) bicyclists;
“(iii) public transit users;
“(iv) older individuals;
“(v) motorists;
“(vi) individuals with disabilities; and
“(vii) users of motor vehicles with a taxable gross weight (as defined in section
4481 of the Internal Revenue Code of 1986) in excess of 55,000 pounds;

“(B) ensures the consideration of the safety and convenience of all users in all phases of project planning and development; and

“(C) delineates a clear procedure that gives due consideration to the geographical location, road classification, population density, and other demographic factors by which projects funded, in whole or in part, under this program may be exempted from complying with the policy.

“(2) CATEGORICAL EXCLUSIONS.—To the extent appropriate, the Secretary shall develop categorical exclusions from the requirement that an environmental assessment or an environmental impact statement under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) be prepared for transportation activities located within an existing right-of-way funded under the program.

“(3) MAINTENANCE OF EFFORT PROVISION.—

“(A) IN GENERAL.—For any fiscal year for which a State receives funds pursuant to this section, the State shall certify to the Secretary that the State will expend funds for the
maintenance and operations of facilities in an amount that is at least equal to the average annual amount of funds expended over the preceding 3 fiscal years.

“(B) Form and Deadline.—A certification described in subparagraph (A) shall be submitted in such form and not later than such date as shall be determined by the Secretary.

“(C) Penalty for Noncompliance.—If a State fails to provide a certification to the Secretary in accordance with subparagraph (A), the Secretary shall withhold from the State, for each fiscal year until such time as the State submits the certification in accordance with subparagraph (A), an amount equal to 10 percent of the amounts the State would have received under this section for the fiscal year.

“(D) Waiver.—The Secretary may temporarily waive the application of this paragraph if unforeseen events significantly impact the ability of a State to meet the biennial state of good repair performance targets.

“(m) Applicability of Planning Requirements.—Nothing in this section limits the applicability
of sections 134 and 135 to projects carried out under this section.

“(n) Continuation of Current Review Practice.—Because each individual project that is carried out under the investment strategy described in the system preservation and renewal plan of a State is subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), a decision by the Secretary concerning a system preservation and renewal plan or an update of the plan in connection with this section shall not be considered to be a Federal action subject to review under that Act.

“(o) Transfer of NHS, Bridge Program, and Interstate Maintenance Apportionments.—On application by a State and approval by the Secretary, the Secretary may transfer to the apportionment of the State under section 104(b)(1) the amount of funds apportioned to the State for a fiscal year ending before October 1, 2010, under paragraphs (1) and (4) of section 104(b), and section 144(e) (as those sections were in effect on the day before the date of enactment of the Federal-Aid Highway Preservation and Renewal Program Act of 2011), that remains available for expenditure by the State.

“(p) Regulations on Performance Measures of Structural Adequacy.—Not later than 1 year after
the date of enactment of the Federal-Aid Highway Preservation and Renewal Program Act of 2011, the Secretary shall promulgate such regulations as are necessary to carry out this section.”.

(b) APPLICATION TO SYSTEM PRESERVATION AND RENEWAL FUNDS.—Section 126 of title 23, United States Code, is amended—

(1) in subsection (a), by striking “subsections (b) and (e)” and inserting “subsections (b), (c) and (d)”; and

(2) by adding at the end the following:

“(d) APPLICATION TO SYSTEM PRESERVATION AND RENEWAL FUNDS.—

“(1) IN GENERAL.—A State may transfer funds apportioned to the State under section 104(m) for the system preservation and renewal program if the State meets the overall state of good repair standards established under section 119(f)(1)(B) for classes of infrastructure under subparagraphs (A) and (C) of sections 119(f)(3).

“(2) GOOD REPAIR STANDARDS.—A State may transfer funds apportioned to the State under sections 104(b)(4) and 144(e) for the system preservation and renewal program if the State meets each of
the overall state of good repair standards established
under section 119(f)(1)(B).”.
(c) CLERICAL AMENDMENT.—The analysis for chap-
ter 1 of title 23, United States Code, is amended by strik-
ing the item relating to section 119 and inserting the fol-
lowing:
“Sec. 119. System preservation and renewal program.”.
(d) CONFORMING AMENDMENTS.—
(1) Section 104 of title 23, United States Code,
is amended by adding at the end the following:
“(m) SYSTEM PRESERVATION AND RENEWAL.—Not-
withstanding any other provision of this section, ½ of the
funds apportioned to a State under subsection (b)(1) shall
be used for system preservation and renewal under section
119 of title 23, United States Code.”.
(2) Section 105 of title 23, United States Code,
is amended in each of subsections (a)(2) and (b)(2)
by striking “the Interstate maintenance program”
each place it appears and inserting “the system
preservation and renewal program”.
(3) Section 118 of title 23, United States Code,
is amended—
(A) by striking subsection (c); and
(B) by redesignating subsections (d) and
(e) as subsections (c) and (d), respectively.

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