

109TH CONGRESS
1ST SESSION

S. 562

To amend title 23, United States Code, to improve the highway safety improvement program and provide for a proportional obligation of amounts made available for the highway safety improvement program.

IN THE SENATE OF THE UNITED STATES

MARCH 8, 2005

Mr. DEWINE (for himself and Mr. ROCKEFELLER) 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 improve the highway safety improvement program and provide for a proportional obligation of amounts made available for the highway safety improvement program.

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 “Safe Streets and High-
5 ways Act of 2005”.

6 **SEC. 2. HIGHWAY SAFETY IMPROVEMENT PROGRAM.**

7 (a) SAFETY IMPROVEMENT.—

1 (1) IN GENERAL.—Section 148 of title 23,
 2 United States Code, is amended to read as follows:

3 **“§ 148. Highway safety improvement program**

4 “(a) DEFINITIONS.—In this section:

5 “(1) DRIVER CONDITIONING.—The term ‘driver
 6 conditioning’ means the process by which drivers
 7 learn to respond to specific road conditions and traf-
 8 fic patterns that generally remain consistent over
 9 time, making the driver susceptible to error when
 10 confronted with minor changes in those road condi-
 11 tions or traffic patterns.

12 “(2) HIGHWAY SAFETY IMPROVEMENT PRO-
 13 GRAM.—The term ‘highway safety improvement pro-
 14 gram’ means the program carried out under this sec-
 15 tion.

16 “(3) HIGHWAY SAFETY IMPROVEMENT
 17 PROJECT.—

18 “(A) IN GENERAL.—The term ‘highway
 19 safety improvement project’ means a project de-
 20 scribed in the State strategic highway safety
 21 plan that—

22 “(i) corrects or improves a hazardous
 23 road location or feature; or

24 “(ii) addresses a highway safety prob-
 25 lem.

1 “(B) INCLUSIONS.—The term ‘highway
2 safety improvement project’ includes a project
3 for—

4 “(i) an intersection safety improve-
5 ment;

6 “(ii) pavement and shoulder widening
7 (including addition of a passing lane to
8 remedy an unsafe condition);

9 “(iii) installation of rumble strips or
10 another warning device, if the rumble
11 strips or other warning devices do not ad-
12 versely affect the safety or mobility of
13 bicyclists and pedestrians;

14 “(iv) installation of a skid-resistant
15 surface at an intersection or other location
16 with a high frequency of accidents;

17 “(v) an improvement for pedestrian or
18 bicyclist safety;

19 “(vi)(I) construction of any project for
20 the elimination of hazards at a railway-
21 highway crossing that is eligible for fund-
22 ing under section 130, including the sepa-
23 ration or protection of grades at railway-
24 highway crossings;

1 “(II) construction of a railway-high-
2 way crossing safety feature; or

3 “(III) the conduct of a model traffic
4 enforcement activity at a railway-highway
5 crossing;

6 “(vii) construction of a traffic calming
7 feature;

8 “(viii) elimination of a roadside obsta-
9 cle;

10 “(ix) improvement of highway signage
11 and pavement markings, including im-
12 provements designed to implement min-
13 imum retroreflectivity standards in compli-
14 ance with section 406 of the Department
15 of Transportation and Related Agencies
16 Appropriations Act, 1993 (106 Stat.
17 1564), and signage designed to identify
18 high-crash locations or address driver con-
19 ditioning hazards;

20 “(x) installation of a priority control
21 system for emergency vehicles at signalized
22 intersections;

23 “(xi) installation of a traffic control or
24 other warning device at a location with
25 high accident potential;

1 “(xii) safety-conscious planning;

2 “(xiii) improvement in the collection
3 and analysis of crash data;

4 “(xiv) planning, integrated, interoper-
5 able emergency communications, equip-
6 ment, operational activities, or traffic en-
7 forcement activities (including police as-
8 sistance) relating to workzone safety;

9 “(xv) installation of guardrails, bar-
10 riers (including barriers between construc-
11 tion work zones and traffic lanes for the
12 safety of motorists and workers), and
13 crash attenuators;

14 “(xvi) the addition or retrofitting of
15 structures or other measures to eliminate
16 or reduce accidents involving vehicles and
17 wildlife; or

18 “(xvii) installation and maintenance
19 of signs (including fluorescent, yellow-
20 green signs) at pedestrian-bicycle crossings
21 and in school zones.

22 “(4) SAFETY PROJECT UNDER ANY OTHER SEC-
23 TION.—

24 “(A) IN GENERAL.—The term ‘safety
25 project under any other section’ means a

1 project carried out for the purpose of safety
 2 under any other section of this title.

3 “(B) INCLUSION.—The term ‘safety
 4 project under any other section’ includes a
 5 project to—

6 “(i) promote the awareness of the
 7 public and educate the public concerning
 8 highway safety matters; or

9 “(ii) enforce highway safety laws.

10 “(5) STATE HIGHWAY SAFETY IMPROVEMENT
 11 PROGRAM.—The term ‘State highway safety im-
 12 provement program’ means projects or strategies in-
 13 cluded in the State strategic highway safety plan
 14 carried out as part of the State transportation im-
 15 provement program under section 135(f).

16 “(6) STATE STRATEGIC HIGHWAY SAFETY
 17 PLAN.—The term ‘State strategic highway safety
 18 plan’ means a plan developed by the State transpor-
 19 tation department that—

20 “(A) is developed after consultation with—

21 “(i) a highway safety representative of
 22 the Governor of the State;

23 “(ii) regional transportation planning
 24 organizations and metropolitan planning
 25 organizations, if any;

1 “(iii) representatives of major modes
2 of transportation;

3 “(iv) State and local traffic enforce-
4 ment officials;

5 “(v) persons responsible for admin-
6 istering section 130 at the State level;

7 “(vi) representatives conducting Oper-
8 ation Lifesaver;

9 “(vii) representatives conducting a
10 motor carrier safety program under section
11 31104 or 31107 of title 49;

12 “(viii) motor vehicle administration
13 agencies; and

14 “(ix) other major State and local safe-
15 ty stakeholders;

16 “(B) analyzes and makes effective use of
17 State, regional, or local crash data;

18 “(C) addresses engineering, management,
19 operation, education, enforcement, and emer-
20 gency services elements (including integrated,
21 interoperable emergency communications) of
22 highway safety as key factors in evaluating
23 highway projects;

24 “(D) considers safety needs of, and high-
25 fatality segments of, public roads;

1 “(E) considers the results of State, re-
2 gional, or local transportation and highway
3 safety planning processes;

4 “(F) describes a program of projects or
5 strategies to reduce or eliminate safety hazards;

6 “(G) is approved by the Governor of the
7 State or a responsible State agency; and

8 “(H) is consistent with the requirements of
9 section 135(f).

10 “(b) PROGRAM.—

11 “(1) IN GENERAL.—The Secretary shall carry
12 out a highway safety improvement program.

13 “(2) PURPOSE.—The purpose of the highway
14 safety improvement program shall be to achieve a
15 significant reduction in traffic fatalities and serious
16 injuries on public roads.

17 “(c) ELIGIBILITY.—

18 “(1) IN GENERAL.—To obligate funds appor-
19 tioned under section 104(b)(5) to carry out this sec-
20 tion, a State shall have in effect a State highway
21 safety improvement program under which the
22 State—

23 “(A) develops and implements a State
24 strategic highway safety plan that identifies and

1 analyzes highway safety problems and opportu-
2 nities as provided in paragraph (2);

3 “(B) produces a program of projects or
4 strategies to reduce identified safety problems;

5 “(C) evaluates the plan on a regular basis
6 to ensure the accuracy of the data and priority
7 of proposed improvements; and

8 “(D) submits to the Secretary an annual
9 report that—

10 “(i) describes, in a clearly understand-
11 able fashion, not less than 25 percent of
12 locations determined by the State, using
13 criteria established in accordance with
14 paragraph (2)(B)(ii), as exhibiting the
15 most severe safety needs; and

16 “(ii) contains an assessment of—

17 “(I) potential remedies to haz-
18 ardous locations identified;

19 “(II) estimated costs associated
20 with those remedies; and

21 “(III) impediments to implemen-
22 tation other than cost associated with
23 those remedies.

24 “(2) IDENTIFICATION AND ANALYSIS OF HIGH-
25 WAY SAFETY PROBLEMS AND OPPORTUNITIES.—As

1 part of the State strategic highway safety plan, a
2 State shall—

3 “(A) have in place a crash data system
4 with the ability to perform safety problem iden-
5 tification and countermeasure analysis;

6 “(B) based on the analysis required by
7 subparagraph (A)—

8 “(i) identify hazardous locations, sec-
9 tions, and elements (including roadside ob-
10 stacles, railway-highway crossing needs,
11 and unmarked or poorly marked roads)
12 that constitute a danger to motorists,
13 bicyclists, pedestrians, and other highway
14 users; and

15 “(ii) using such criteria as the State
16 determines to be appropriate, establish the
17 relative severity of those locations, in terms
18 of accidents, injuries, deaths, traffic vol-
19 ume levels, and other relevant data;

20 “(C) adopt strategic and performance-
21 based goals that—

22 “(i) address traffic safety, including
23 behavioral and infrastructure problems and
24 opportunities on all public roads;

1 “(ii) focus resources on areas of
2 greatest need; and

3 “(iii) are coordinated with other State
4 highway safety programs;

5 “(D) advance the capabilities of the State
6 for traffic records data collection, analysis, and
7 integration with other sources of safety data
8 (such as road inventories) in a manner that—

9 “(i) complements the State highway
10 safety program under chapter 4 and the
11 commercial vehicle safety plan under sec-
12 tion 31102 of title 49;

13 “(ii) includes all public roads;

14 “(iii) identifies hazardous locations,
15 sections, and elements on public roads that
16 constitute a danger to motorists, bicyclists,
17 pedestrians, and other highway users; and

18 “(iv) includes a means of identifying
19 the relative severity of hazardous locations
20 described in clause (iii) in terms of acci-
21 dents, injuries, deaths, and traffic volume
22 levels;

23 “(E)(i) determine priorities for the correc-
24 tion of hazardous road locations, sections, and
25 elements (including railway-highway crossing

1 improvements), as identified through crash data
2 analysis;

3 “(ii) identify opportunities for preventing
4 the development of such hazardous conditions;
5 and

6 “(iii) establish and implement a schedule
7 of highway safety improvement projects for haz-
8 ard correction and hazard prevention; and

9 “(F)(i) establish an evaluation process to
10 analyze and assess results achieved by highway
11 safety improvement projects carried out in ac-
12 cordance with procedures and criteria estab-
13 lished by this section; and

14 “(ii) use the information obtained under
15 clause (i) in setting priorities for highway safety
16 improvement projects.

17 “(d) ELIGIBLE PROJECTS.—

18 “(1) IN GENERAL.—A State may obligate funds
19 apportioned to the State under section 104(b)(5) to
20 carry out—

21 “(A) any highway safety improvement
22 project on any public road or publicly owned bi-
23 cycle or pedestrian pathway or trail; or

24 “(B) as provided in subsection (e), for
25 other safety projects.

1 “(2) USE OF OTHER FUNDING FOR SAFETY.—

2 “(A) EFFECT OF SECTION.—Nothing in
3 this section prohibits the use of funds made
4 available under other provisions of this title for
5 highway safety improvement projects.

6 “(B) USE OF OTHER FUNDS.—States are
7 encouraged to address the full scope of their
8 safety needs and opportunities by using funds
9 made available under other provisions of this
10 title (except a provision that specifically pro-
11 hibits that use).

12 “(e) FLEXIBLE FUNDING FOR STATES WITH A STRA-
13 TEGIC HIGHWAY SAFETY PLAN.—

14 “(1) IN GENERAL.—To further the implementa-
15 tion of a State strategic highway safety plan, a State
16 may use up to 25 percent of the amount of funds
17 made available under this section for a fiscal year to
18 carry out safety projects under any other section as
19 provided in the State strategic highway safety plan.

20 “(2) OTHER TRANSPORTATION AND HIGHWAY
21 SAFETY PLANS.—Nothing in this subsection requires
22 a State to revise any State process, plan, or program
23 in effect on the date of enactment of this section.

24 “(f) REPORTS.—

1 “(1) IN GENERAL.—A State shall submit to the
2 Secretary a report that—

3 “(A) describes progress being made to im-
4 plement highway safety improvement projects
5 under this section;

6 “(B) assesses the effectiveness of those im-
7 provements; and

8 “(C) describes the extent to which the im-
9 provements funded under this section contribute
10 to the goals of—

11 “(i) reducing the number of fatalities
12 on roadways;

13 “(ii) reducing the number of roadway-
14 related injuries;

15 “(iii) reducing the occurrences of
16 roadway-related crashes;

17 “(iv) mitigating the consequences of
18 roadway-related crashes; and

19 “(v) reducing the occurrences of road-
20 way-railroad grade crossing crashes.

21 “(2) CONTENTS; SCHEDULE.—The Secretary
22 shall establish the content and schedule for a report
23 under paragraph (1).

1 “(3) TRANSPARENCY.—The Secretary shall
2 make reports under subsection (c)(1)(D) available to
3 the public through—

4 “(A) the Internet site of the Department;
5 and

6 “(B) such other means as the Secretary
7 determines to be appropriate.

8 “(4) DISCOVERY AND ADMISSION INTO EVI-
9 DENCE OF CERTAIN REPORTS, SURVEYS, AND INFOR-
10 MATION.—Notwithstanding any other provision of
11 law, reports, surveys, schedules, lists, or data com-
12 piled or collected for any purpose directly relating to
13 paragraph (1) or subsection (c)(1)(D), or published
14 by the Secretary in accordance with paragraph (3),
15 shall not be subject to discovery or admitted into
16 evidence in a Federal or State court proceeding or
17 considered for other purposes in any action for dam-
18 ages arising from any occurrence at a location iden-
19 tified or addressed in such reports, surveys, sched-
20 ules, lists, or other data.

21 “(g) FEDERAL SHARE OF HIGHWAY SAFETY IM-
22 PROVEMENT PROJECTS.—Except as provided in sections
23 120 and 130, the Federal share of the cost of a highway
24 safety improvement project carried out with funds made
25 available under this section shall be 90 percent.

1 “(h) FUNDS FOR BICYCLE AND PEDESTRIAN SAFE-
 2 TY.—A State shall allocate for bicycle and pedestrian im-
 3 provements in the State a percentage of the funds remain-
 4 ing after implementation of sections 130(e) and 150, in
 5 an amount that is equal to or greater than the percentage
 6 of all fatal crashes in the States involving bicyclists and
 7 pedestrians.

8 “(i) ROADWAY SAFETY IMPROVEMENTS FOR OLDER
 9 DRIVERS AND PEDESTRIANS.—For each of fiscal years
 10 2005 through 2010, \$25,000,000 is authorized to be ap-
 11 propriated out of the Highway Trust Fund (other than
 12 the Mass Transit Account) for projects in all States to
 13 improve traffic signs and pavement markings in a manner
 14 consistent with the recommendations included in the pub-
 15 lication of the Federal Highway Administration entitled
 16 ‘Guidelines and Recommendations to Accommodate Older
 17 Drivers and Pedestrians (FHWA–RD–01–103)’ and dated
 18 October 2001.”.

19 (2) ALLOCATIONS OF APPORTIONED FUNDS.—
 20 Section 133(d) of title 23, United States Code, is
 21 amended—

22 (A) by striking paragraph (1);

23 (B) by redesignating paragraphs (2)
 24 through (5) as paragraphs (1) through (4), re-
 25 spectively;

1 (C) in paragraph (2) (as redesignated by
2 subparagraph (B))—

3 (i) in the first sentence of subpara-
4 graph (A)—

5 (I) by striking “subparagraphs
6 (C) and (D)” and inserting “subpara-
7 graph (C)”; and

8 (II) by striking “80 percent” and
9 inserting “90 percent”;

10 (ii) in subparagraph (B), by striking
11 “tobe” and inserting “to be”;

12 (iii) by striking subparagraph (C);

13 (iv) by redesignating subparagraphs
14 (D) and (E) as subparagraphs (C) and
15 (D), respectively; and

16 (v) in subparagraph (C) (as redesign-
17 ated by clause (iv)), by adding a period at
18 the end; and

19 (D) in paragraph (4)(A) (as redesignated
20 by subparagraph (B)), by striking “paragraph
21 (2)” and inserting “paragraph (1)”.

22 (3) ADMINISTRATION.—Section 133(e) of title
23 23, United States Code, is amended in each of para-
24 graphs (3)(B)(i), (5)(A), and (5)(B) of subsection

1 (e), by striking “(d)(2)” each place it appears and
2 inserting “(d)(1)”.

3 (4) CONFORMING AMENDMENTS.—

4 (A) The analysis for chapter 1 of title 23,
5 United States Code, is amended by striking the
6 item relating to section 148 and inserting the
7 following:

“148. Highway safety improvement program”.

8 (B) Section 104(g) of title 23, United
9 States Code, is amended in the first sentence by
10 striking “sections 130, 144, and 152 of this
11 title” and inserting “sections 130 and 144”.

12 (C) Section 126 of title 23, United States
13 Code, is amended—

14 (i) in subsection (a), by inserting
15 “under” after “State’s apportionment”;
16 and

17 (ii) in subsection (b)—

18 (I) in the first sentence, by strik-
19 ing “the last sentence of section
20 133(d)(1) or to section 104(f) or to
21 section 133(d)(3)” and inserting “sec-
22 tion 104(f) or 133(d)(2)”; and

23 (II) in the second sentence, by
24 striking “or 133(d)(2)”.

1 (D) Sections 154, 164, and 409 of title 23,
2 United States Code, are amended by striking
3 “152” each place it appears and inserting
4 “148”.

5 (b) APPORTIONMENT OF HIGHWAY SAFETY IM-
6 PROVEDMENT PROGRAM FUNDS.—Section 104(b) of title
7 23, United States Code, is amended—

8 (1) in the matter preceding paragraph (1), by
9 inserting after “Improvement program,” the fol-
10 lowing: “the highway safety improvement program,”;
11 and

12 (2) by adding at the end the following:

13 “(5) HIGHWAY SAFETY IMPROVEMENT PRO-
14 GRAM.—

15 “(A) IN GENERAL.—For the highway safe-
16 ty improvement program, in accordance with
17 the following formula:

18 “(i) 25 percent of the apportionments
19 in the ratio that—

20 “(I) the total lane miles of Fed-
21 eral-aid highways in each State; bears
22 to

23 “(II) the total lane miles of Fed-
24 eral-aid highways in all States.

1 “(ii) 40 percent of the apportionments
2 in the ratio that—

3 “(I) the total vehicle miles trav-
4 eled on lanes on Federal-aid highways
5 in each State; bears to

6 “(II) the total vehicle miles trav-
7 eled on lanes on Federal-aid highways
8 in all States.

9 “(iii) 35 percent of the appor-
10 tionments in the ratio that—

11 “(I) the estimated tax payments
12 attributable to highway users in each
13 State paid into the Highway Trust
14 Fund (other than the Mass Transit
15 Account) in the latest fiscal year for
16 which data are available; bears to

17 “(II) the estimated tax payments
18 attributable to highway users in all
19 States paid into the Highway Trust
20 Fund (other than the Mass Transit
21 Account) in the latest fiscal year for
22 which data are available.

23 “(B) MINIMUM APPORTIONMENT.—Not-
24 withstanding subparagraph (A), each State

1 shall receive a minimum of ½ of 1 percent of
2 the funds apportioned under this paragraph.”.

3 (c) ELIMINATION OF HAZARDS RELATING TO RAIL-
4 WAY-HIGHWAY CROSSINGS.—

5 (1) FUNDS FOR RAILWAY-HIGHWAY CROSS-
6 INGS.—Section 130(e) of title 23, United States
7 Code, is amended by inserting before “At least” the
8 following: “For each fiscal year, at least
9 \$200,000,000 of the funds authorized and expended
10 under section 148 shall be available for the elimi-
11 nation of hazards and the installation of protective
12 devices at railway-highway crossings.”.

13 (2) BIENNIAL REPORTS TO CONGRESS.—Sec-
14 tion 130(g) of title 23, United States Code, is
15 amended in the third sentence—

16 (A) by inserting “and the Committee on
17 Commerce, Science, and Transportation,” after
18 “Public Works”; and

19 (B) by striking “not later than April 1 of
20 each year” and inserting “every other year”.

21 (3) EXPENDITURE OF FUNDS.—Section 130 of
22 title 23, United States Code, is amended by adding
23 at the end the following:

24 “(k) EXPENDITURE OF FUNDS.—Funds made avail-
25 able to carry out this section shall be—

1 “(1) available for expenditure on compilation
2 and analysis of data in support of activities carried
3 out under subsection (g); and

4 “(2) apportioned in accordance with section
5 104(b)(5).”.

6 (d) TRANSITION.—

7 (1) IMPLEMENTATION.—Except as provided in
8 paragraph (2), the Secretary shall approve obliga-
9 tions of funds apportioned under section 104(b)(5)
10 of title 23, United States Code (as added by sub-
11 section (b)) to carry out section 148 of that title,
12 only if, not later than October 1 of the second fiscal
13 year after the date of enactment of this Act, a State
14 has developed and implemented a State strategic
15 highway safety plan as required under section
16 148(c) of that title.

17 (2) INTERIM PERIOD.—

18 (A) IN GENERAL.—Before October 1 of the
19 second fiscal year after the date of enactment
20 of this Act and until the date on which a State
21 develops and implements a State strategic high-
22 way safety plan, the Secretary shall apportion
23 funds to a State for the highway safety im-
24 provement program and the State may obligate
25 funds apportioned to the State for the highway

1 safety improvement program under section 148
2 for projects that were eligible for funding under
3 sections 130 and 152 of that title, as in effect
4 on the day before the date of enactment of this
5 Act.

6 (B) NO STRATEGIC HIGHWAY SAFETY
7 PLAN.—If a State has not developed a strategic
8 highway safety plan by October 1 of the second
9 fiscal year after the date of enactment of this
10 Act, but demonstrates to the satisfaction of the
11 Secretary that progress is being made toward
12 developing and implementing such a plan, the
13 Secretary shall continue to apportion funds for
14 1 additional fiscal year for the highway safety
15 improvement program under section 148 of title
16 23, United States Code, to the State, and the
17 State may continue to obligate funds appor-
18 tioned to the State under this section for
19 projects that were eligible for funding under
20 sections 130 and 152 of that title, as in effect
21 on the day before the date of enactment of this
22 Act.

23 (C) PENALTY.—If a State has not adopted
24 a strategic highway safety plan by the date that
25 is 2 years after the date of enactment of this

1 Act, funds made available to the State under
2 section 1101(6) shall be redistributed to other
3 States in accordance with section 104(b)(3) of
4 title 23, United States Code.

○