

111TH CONGRESS
1ST SESSION

H. R. 2125

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

IN THE HOUSE OF REPRESENTATIVES

APRIL 27, 2009

Mr. RAHALL (for himself, Ms. CORRINE BROWN of Florida, and Mr. GERLACH) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

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, including tunnels and bridges,
18 unless 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, outside of an urbanized area, and
 6 on a roadway with an annual average daily traf-
 7 fic load that is less than 100 vehicles per hour;
 8 and

9 (3) when positive protective devices are nec-
 10 essary for highway construction projects, such 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 a per-
 14 formance-based contract 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) APPROVAL OF USE OF FEDERAL FUNDS.—

2 The Secretary shall approve the use of Federal
3 funds made available to carry out this chapter by a
4 State in the payment of patented or proprietary
5 items if the State transportation department cer-
6 tifies, based on the documented analysis and profes-
7 sional judgment of qualified State transportation of-
8 ficials, that—

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

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

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

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

22 “(2) RELATIONSHIP TO OTHER LAWS.—The au-
23 thority to utilize patented or proprietary items pro-
24 vided in paragraph (1) is in addition to authority to
25 utilize such products that exists under this section

1 and under section 635.411 of title 23, Code of Fed-
2 eral Regulations, as in effect on March 2, 2009. The
3 Secretary may not revise such regulation to reduce
4 authority to utilize patented or proprietary items.”.

5 **SEC. 5. MINIMUM LEVEL OF RETROREFLECTIVITY FOR**
6 **PAVEMENT MARKINGS.**

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

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

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

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

1 Traffic Control Devices relating to min-
2 imum levels of retroreflectivity.”.

3 (b) MAINTAINING MINIMUM LEVELS OF
4 RETROREFLECTIVITY.—

5 (1) DEFINITION.—Section 148(a) of such title
6 is amended by adding at the end the following:

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

16 (2) ELIGIBLE PROJECTS.—Section 148(d)(1) of
17 such title is amended—

18 (A) by striking “or” at the end of subpara-
19 graph (A);

20 (B) by redesignating subparagraph (B) as
21 subparagraph (C); and

22 (C) by inserting after subparagraph (A)
23 the following:

24 “(B) any project to maintain minimum lev-
25 els of retroreflectivity on a public road, whether

1 or not such project is included in the State
 2 strategic highway safety plan; or”.

3 (3) INCREASED FEDERAL SHARE.—The first
 4 sentence of section 120(c)(1) is amended by insert-
 5 ing “maintaining minimum levels of retroreflectivity
 6 of highway signs or pavement markings,” after “sig-
 7 nalization,”.

8 **SEC. 7. ROADWAY SAFETY IMPROVEMENT PROGRAM FOR**
 9 **OLDER DRIVERS AND PEDESTRIANS.**

10 (a) IN GENERAL.—The Secretary of Transportation
 11 shall carry out a program to improve traffic signs and
 12 pavement markings in all States (as such term is defined
 13 in section 101 of title 23, United States Code) 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
 18 dated October 2001.

19 (b) APPORTIONMENT OF FUNDS.—On October 1 of
 20 each fiscal year, the Secretary shall apportion sums au-
 21 thorized to be appropriated to carry out this section for
 22 such fiscal year among the several States using the overall
 23 formula share for each State for fiscal year 2009 for all
 24 funds subject to section 105 of title 23, United States

1 Code, including equity bonus funds, obtained after appli-
 2 cation of such section 105 for such fiscal year.

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

7 (d) AUTHORIZATION OF APPROPRIATIONS.—There is
 8 authorized to be appropriated out of the Highway Trust
 9 Fund (other than the Mass Transit Account) \$90,000,000
 10 to carry out this section for each of fiscal years 2010
 11 through 2014.

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

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

17 (a) TRANSPARENCY OF STATE SURVEY AND SCHED-
 18 ULE OF RAILWAY-HIGHWAY GRADE CROSSINGS.—

19 (1) SURVEY AND SCHEDULE OF PROJECTS.—
 20 Section 130(d) of title 23, United States Code, is
 21 amended by adding at the end the following: “Each
 22 State shall make surveys and schedules compiled
 23 under this subsection available to the public through
 24 the Internet Web site of the State.”.

1 (2) EFFECTIVE DATE.—The amendment made
 2 by paragraph (1) shall take effect on the date that
 3 is 180 days after the date of enactment of this sub-
 4 section.

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

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

12 (1) in subsection (e)(1) by striking the first
 13 sentence; and

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

16 **SEC. 9. REVIEW OF SAFETY OF RAIL-HIGHWAY GRADE**
 17 **CROSSINGS.**

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

21 (b) METHOD.—In reviewing the safety of a rail-high-
 22 way grade crossing under subsection (a), the Secretary
 23 shall—

24 (1) assess, at a minimum, safety conditions, av-
 25 erage daily traffic, proximity to schools, past acci-

1 dents, fatalities, and possible safety improvements;
2 and

3 (2) determine the best method for making the
4 crossing safer, including closings, grade separations,
5 installation of protective devices, and other methods.

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

12 (d) INCLUSION IN RAIL-HIGHWAY GRADE CROSSING
13 DATABASE.—The Secretary shall include the information
14 collected in conducting the comprehensive review under
15 subsection (a), and the priority list submitted under sub-
16 section (c), in the national database on the safety of rail-
17 highway grade crossings required under section 20168(a)
18 of title 49, United States Code, as added by section 10
19 of this Act.

20 (e) UPDATE.—The Secretary shall update the com-
21 prehensive review under subsection (a) at least once every
22 4 years.

23 (f) AVAILABILITY OF INFORMATION.—The Secretary
24 shall make priority lists and databases compiled under this

1 section available to the public through the Internet Web
 2 site of the Department of Transportation.

3 (g) LIMITATION ON USE OF DATA IN JUDICIAL PRO-
 4 CEEDINGS.—Notwithstanding any other provision of law,
 5 any report, review, survey, schedule, list, data, or informa-
 6 tion or document of any kind compiled or collected pursu-
 7 ant to this section, including for the purpose of identi-
 8 fying, evaluating, or planning the safety enhancement of
 9 a potential accident site or railway-highway crossing pur-
 10 suant to this section shall not be subject to discovery or
 11 admitted into evidence in a Federal or State court pro-
 12 ceeding or considered for other purposes in any action for
 13 damages arising from any occurrence at a location men-
 14 tioned or addressed in such report, review, survey, sched-
 15 ule, list, or data.

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

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

20 **“§ 20168. Rail-highway grade crossing safety informa-**
 21 **tion**

22 “(a) ESTABLISHMENT OF DATABASE.—The Sec-
 23 retary of Transportation shall establish and maintain a
 24 national database of information on the safety of rail-high-
 25 way grade crossings in the United States.

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

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

“20168. Rail-highway grade crossing safety information.”.

10 **SEC. 11. RURAL STATE INITIATIVE.**

11 (a) IN GENERAL.—To address the problem of a sig-
 12 nificant portion of traffic fatalities occurring on highways
 13 in rural areas, the Secretary of Transportation shall, for
 14 each fiscal year beginning with fiscal year 2010, allocate
 15 \$20,000,000 to each State with a population density of
 16 less than 20 persons per square mile (based on the most
 17 recent decennial census) for use by such States for
 18 projects, programs, and activities that are eligible for as-
 19 sistance under section 148 of title 23, United States Code,
 20 and not located in an urbanized area (as defined in section
 21 134(b)(6) of such title).

22 (b) TREATMENT OF FUNDS.—Such allocations shall
 23 not be considered an apportionment within the meaning
 24 of section 105 of such title or considered a “specific pro-
 25 gram” within the meaning of such section 105.

1 (c) FEDERAL SHARE.—The Federal share of the cost
2 of a project carried out under this section shall be deter-
3 mined in accordance with section 120 of such title.

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

9 (e) APPLICABILITY OF TITLE 23.—Except as pro-
10 vided by subsection (b), funds made available to carry out
11 this section shall be available for obligation in the same
12 manner as if such funds were apportioned under chapter
13 1 of title 23, United States Code.

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