

112TH CONGRESS
1ST SESSION

S. 918

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

IN THE SENATE OF THE UNITED STATES

MAY 9, 2011

Mr. BAUCUS introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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 2011”.

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 the Standard on Protective En-
5 sembles for Structural Fire Fighting and Proximity Fire
6 Fighting (NFPA 1971–2007) in lieu of apparel meeting
7 the requirements set forth in ANSI/ISEA 107–2004.

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

9 Not later than 60 days after the date of the enact-
10 ment of this Act, the Secretary of Transportation shall
11 modify section 630.1108(a) of title 23, Code of Federal
12 Regulations, 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 unless an engineering analysis
18 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 if the project design speed is 45 miles per hour
23 or greater and the nature of the work requires work-
24 ers to be within 1 lane-width from the edge of a live
25 travel lane, unless—

1 (A) an engineering analysis determines
2 that such conditions do not exist; or

3 (B)(i) the project is located in a State with
4 a population density of 20 or fewer persons per
5 square mile and outside of an urbanized area;
6 and

7 (ii) the road's annual average daily traffic
8 load is less than 100 vehicles per hour; and

9 (3) positive protective devices that are nec-
10 essary for highway construction projects are paid for
11 on a unit pay basis, unless—

12 (A) such payment method would create a
13 conflict with innovative contracting approaches,
14 such as design-build or some performance-based
15 contracts for which the contractor is paid to as-
16 sume a certain risk allocation; and

17 (B) payment is generally made on a lump
18 sum basis.

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

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

1 “(h) USE OF PATENTED OR PROPRIETARY ITEMS TO
2 FURTHER STATE STRATEGIC HIGHWAY SAFETY
3 PLANS.—

4 “(1) IN GENERAL.—The Secretary shall ap-
5 prove the use of Federal funds made available to
6 carry out this chapter in the payment of patented or
7 proprietary items if the State transportation depart-
8 ment certifies, based on the documented analysis
9 and professional judgment of qualified State trans-
10 portation officials, that—

11 “(A) the patented or proprietary item will
12 contribute to the accomplishment of 1 or more
13 goals set forth in the State’s strategic highway
14 safety plan;

15 “(B) no equally suitable alternative item
16 exists;

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

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

24 “(2) CLARIFICATION OF AUTHORITY.—The au-
25 thority to utilize patented or proprietary items pro-

1 vided in paragraph (1) is in addition to authority to
2 utilize such products under this section and under
3 section 635.411 of title 23, Code of Federal Regula-
4 tions, as in effect on March 2, 2009, which may not
5 be revised by the Secretary to reduce authority to
6 utilize patented or proprietary items.”.

7 **SEC. 5. MINIMUM LEVEL OR RETROREFLECTIVITY FOR**
8 **PAVEMENT MARKINGS.**

9 Not later than October 1, 2012, the Secretary of
10 Transportation shall revise the Manual on Uniform Traf-
11 fic Control Devices to include a standard for a minimum
12 level of retroreflectivity that shall be maintained for pave-
13 ment markings and shall apply to all roads open to public
14 travel.

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

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

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

1 ment contained in the Manual on Uniform
 2 Traffic Control Devices relating to min-
 3 imum levels of retroreflectivity.”.

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

6 (1) ELIGIBLE PROJECTS.—Section 148 of title
 7 23, United States Code, is amended—

8 (A) in subsection (a), by adding at the end
 9 the following:

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

19 (B) in subsection (d)(1)—

20 (i) in subparagraph (A), by striking
 21 “or” at the end;

22 (ii) by redesignating subparagraph
 23 (B) as subparagraph (C); and

24 (iii) by inserting after subparagraph
 25 (A) the following:

1 “(B) any project to maintain minimum lev-
2 els of retroreflectivity on any public road, re-
3 gardless of whether such project is included in
4 the State strategic highway safety plan; or”.

5 (2) FEDERAL SHARE.—Section 120(c)(1) of
6 title 23, United States Code, is amended by insert-
7 ing “maintaining minimum levels of retroreflectivity
8 of highway signs or pavement markings,” after “sig-
9 nalization,”.

10 **SEC. 7. ROADWAY SAFETY IMPROVEMENT PROGRAM FOR**
11 **OLDER DRIVERS AND PEDESTRIANS.**

12 (a) IN GENERAL.—The Secretary of Transportation
13 shall carry out a program to improve traffic signs and
14 pavement markings in all States (as such term is defined
15 in section 101 of title 23, United States Code) in a manner
16 consistent with the recommendations included in the Octo-
17 ber 2001 publication of the Federal Highway Administra-
18 tion entitled “Guidelines and Recommendations to Accom-
19 modate Older Drivers and Pedestrians (FHWA–RD–01–
20 103)”.

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

1 funds subject to section 105 of title 23, United States
 2 Code, including equity bonus funds, obtained after appli-
 3 cation of such section 105 for such fiscal year.

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

8 (d) AUTHORIZATION OF APPROPRIATIONS.—There is
 9 authorized to be appropriated out of the Highway Trust
 10 Fund (other than the Mass Transit Account) \$90,000,000
 11 to carry out this section for each of the fiscal years 2012
 12 through 2016.

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

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

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

20 (1) IN GENERAL.—Section 130 of title 23,
 21 United States Code, is amended—

22 (A) in subsection (d), by adding at the end
 23 the following: “Each State shall make surveys
 24 and schedules compiled under this subsection

1 available to the public through the Internet
2 Web site of the State.”;

3 (B) in subsection (e)(1), by striking the
4 first sentence; and

5 (C) in subsection (f), by striking “set
6 aside” each place it appears and inserting
7 “made available”.

8 (2) EFFECTIVE DATE.—This subsection shall
9 take effect on the date that is 180 days after the
10 date of the enactment of this Act.

11 (b) AUTHORIZATION OF APPROPRIATIONS.—There is
12 authorized to be appropriated out of the Highway Trust
13 Fund (other than the Mass Transit Account) to carry out
14 section 130 of title 23, United States Code, \$220,000,000
15 for each of the fiscal years 2012 through 2016.

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 highway-rail grade crossings in the United States.

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

1 (1) assess safety conditions, average daily traf-
2 fic, proximity to schools, past accidents, fatalities,
3 and possible safety improvements; and

4 (2) determine the best methods for making
5 crossings safer, including closings, grade separa-
6 tions, installation of protective devices, or other
7 methods.

8 (c) PRIORITY LIST.—The Secretary shall use the in-
9 formation collected under subsection (a) to compile, main-
10 tain, and submit to Congress a list of the 10 highway-
11 rail grade crossings in each State that have the greatest
12 need for safety improvements.

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

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, informa-
6 tion, or document of any kind compiled or collected pursu-
7 ant to this section, including materials for identifying,
8 evaluating, or planning the safety enhancement of a poten-
9 tial accident site or railway-highway crossing, shall not
10 be—

11 (1) subject to discovery or admitted into evi-
12 dence in a Federal or State court proceeding; or

13 (2) considered for other purposes in any action
14 for damages arising from any occurrence at a loca-
15 tion mentioned or addressed in such report, review,
16 survey, schedule, list, or data.

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

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

21 **“SEC. 20168. RAIL-HIGHWAY GRADE CROSSING SAFETY IN-**
22 **FORMATION.**

23 **“(a) ESTABLISHMENT OF DATABASE.**—The Sec-
24 retary of Transportation shall establish and maintain a

1 national database of information on the safety of highway-
2 rail grade crossings in the United States.

3 “(b) ACCIDENT AND INCIDENT REPORTS TO BE IN-
4 CLUDED IN DATABASE.—The database established under
5 subsection (a) shall contain information from incident re-
6 ports filed with the Federal Railroad Administration re-
7 garding accidents and other safety-related incidents that
8 have occurred at highway-rail grade crossings.”.

9 (b) CLERICAL AMENDMENT.—The chapter analysis
10 for chapter 201 of title 49, United States Code, is amend-
11 ed by adding at the end the following:

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

12 **SEC. 11. RURAL STATE INITIATIVE.**

13 (a) IN GENERAL.—

14 (1) ALLOCATION.—The Secretary of Transpor-
15 tation shall address the problem of a significant por-
16 tion of traffic fatalities occurring on highways in
17 rural areas by allocating, for fiscal year 2012 and
18 each subsequent fiscal year, \$20,000,000 to each
19 State with a population density of less than 20 per-
20 sons per square mile (based on the most recent de-
21 cennial census).

22 (2) USE OF FUNDS.—Amounts allocated pursu-
23 ant to paragraph (1) may be used by States for
24 projects, programs, and activities that—

1 (A) are eligible for funding under section
2 148(d) of title 23, United States Code; and

3 (B) are not located in an urbanized area
4 (as defined in section 134(b)(6), title 23,
5 United States Code).

6 (3) EQUITY BONUS PROGRAM.—Allocations
7 under this subsection shall not be considered—

8 (A) an “apportionment” within the mean-
9 ing of section 105 of title 23, United States
10 Code; or

11 (B) a “specific program” within the mean-
12 ing of subsection (a)(2) of such section.

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

17 (c) AUTHORIZATION OF APPROPRIATIONS.—There is
18 authorized to be appropriated out of the Highway Trust
19 Fund (other than the Mass Transit Account) such sums
20 as may be necessary to carry out this section for each of
21 the fiscal years 2012 through 2016.

22 (d) APPLICABILITY OF TITLE 23.—Except as pro-
23 vided under subsection (a)(3), amounts made available to
24 carry out this section shall be available for obligation in

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

