

112TH CONGRESS  
1ST SESSION

# S. 972

To amend titles 23 and 49, United States Code, to establish procedures to advance the use of cleaner construction equipment on Federal-aid highway and public transportation construction projects, to make the acquisition and installation of emission control technology an eligible expense in carrying out such projects, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MAY 12, 2011

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

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## A BILL

To amend titles 23 and 49, United States Code, to establish procedures to advance the use of cleaner construction equipment on Federal-aid highway and public transportation construction projects, to make the acquisition and installation of emission control technology an eligible expense in carrying out such projects, and for other purposes.

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 “Clean Construction  
5 Act of 2011”.

1 **SEC. 2. HIGHWAY CONSTRUCTION PROJECTS.**

2 (a) IN GENERAL.—Chapter 3 of title 23, United  
3 States Code is amended by adding at the end the fol-  
4 lowing:

5 **“§ 330. Construction equipment and vehicles**

6 “(a) DEFINITIONS.—In this section:

7 “(1) CHANGE ORDER.—The term ‘change  
8 order’ means a written document that—

9 “(A) modifies any provision of a contract  
10 to carry out a covered highway construction  
11 project; and

12 “(B) is issued by a State transportation  
13 department that is a party to that contract to  
14 implement a diesel emission control technology.

15 “(2) COVERED EQUIPMENT.—

16 “(A) IN GENERAL.—The term ‘covered  
17 construction equipment’ means any off-road  
18 diesel equipment and any on-road diesel equip-  
19 ment that is operated on a covered highway  
20 construction project for not less than 80 hours  
21 over the life of the project.

22 “(B) EXCLUSIONS.—The term ‘covered  
23 construction equipment’ does not include—

24 “(i) equipment with an engine that  
25 meets or exceeds any particulate matter  
26 emission standards for the applicable en-

1           gine power group issued by the Environ-  
 2           mental Protection Agency relating to par-  
 3           ticulate matter exhaust for new diesel en-  
 4           gines that are in effect on the date on  
 5           which the highway construction project  
 6           commences;

7           “(ii) equipment with diesel exhaust  
 8           control technology that was installed dur-  
 9           ing the 6-year period ending on the date of  
 10          award of the contract for the covered high-  
 11          way construction project;

12          “(iii) large cranes, such as Sky cranes  
 13          or Link Belt cranes, that are responsible  
 14          for critical lift operations, if the emission  
 15          control technology would adversely affect  
 16          lift capacity; and

17          “(iv) additional or replacement equip-  
 18          ment brought on the job site after work  
 19          has commenced to prevent or remedy harm  
 20          to human beings or to address an emer-  
 21          gency.

22          “(3) COVERED HIGHWAY CONSTRUCTION  
 23          PROJECT.—

24          “(A) IN GENERAL.—The term ‘covered  
 25          highway construction project’ means a Federal-

1 aid highway construction project carried out  
2 under this title or any other Federal law.

3 “(B) INCLUSIONS.—The term ‘covered  
4 highway construction project’ includes—

5 “(i) projects funded, in whole or in  
6 part, by amounts from the Highway Trust  
7 Fund; and

8 “(ii) projects funded, in whole or in  
9 part, by amounts from the general fund of  
10 the Treasury.

11 “(4) DIESEL EMISSION CONTROL TECH-  
12 NOLOGY.—

13 “(A) IN GENERAL.—Subject to subpara-  
14 graph (B), the term ‘diesel emission control  
15 technology’ means a technology that—

16 “(i) is—

17 “(I) a diesel exhaust control tech-  
18 nology;

19 “(II) a diesel engine upgrade;

20 “(III) a diesel engine repower; or

21 “(IV) an idle reduction control  
22 technology; and

23 “(ii) reduces PM<sub>2.5</sub> emissions from  
24 covered equipment by—

1                   “(I) not less than 85 percent  
2                   control of any emission of particulate  
3                   matter; or

4                   “(II) the maximum achievable re-  
5                   duction of any emission of particulate  
6                   matter.

7                   “(B) CRITERIA.—

8                   “(i) IN GENERAL.—To be considered  
9                   a ‘diesel emission control technology’, the  
10                  technology described in subparagraph  
11                  (A)(i) shall meet the criteria described in  
12                  clauses (ii) through (v), as applicable.

13                  “(ii) DIESEL EXHAUST CONTROL  
14                  TECHNOLOGY.—For a diesel exhaust con-  
15                  trol technology, the technology shall be—

16                         “(I) installed on a diesel engine  
17                         or vehicle;

18                         “(II) included on a list of verified  
19                         retrofit technologies maintained by  
20                         the Environmental Protection Agency  
21                         or the California Air Resources  
22                         Board; and

23                         “(III) certified by the installer as  
24                         having been installed in accordance  
25                         with the specifications included on the

1 list referred to in subclause (II) for  
2 achieving a reduction in 1 or more air  
3 quality criteria for air pollutants  
4 under section 109 of the Clean Air  
5 Act (42 U.S.C. 7409).

6 “(iii) DIESEL ENGINE UPGRADE.—

7 For a diesel engine upgrade, the upgrade  
8 shall be performed on an engine that is—

9 “(I) rebuilt using new compo-

10 nents that collectively appear as a sys-  
11 tem, such as a kit, on a list of verified  
12 retrofit technologies maintained by  
13 the Environmental Protection Agency  
14 or the California Air Resources  
15 Board; and

16 “(II) certified by the installer to

17 have been installed in accordance with  
18 the specifications included on the list  
19 referred to in subclause (I) for achiev-  
20 ing a reduction in 1 or more air qual-  
21 ity criteria for air pollutants under  
22 section 109 of the Clean Air Act (42  
23 U.S.C. 7409).

24 “(iv) DIESEL ENGINE REPOWER.—

25 For a diesel engine repower, the repower

1 shall be conducted on a new or remanufac-  
2 tured diesel engine that is—

3 “(I) installed as a replacement  
4 for an engine used in the existing  
5 equipment, subject to the condition  
6 that the replaced engine is—

7 “(aa) used for scrap;

8 “(bb) permanently disabled;

9 or

10 “(cc) returned to the origi-  
11 nal manufacturer for remanufac-  
12 ture to a PM level that is at least  
13 equivalent to a Tier 2 emission  
14 standard; and

15 “(II) certified by the engine man-  
16 ufacturer as meeting the emission  
17 standards for new vehicles for the ap-  
18 plicable engine power group estab-  
19 lished by the Environmental Protec-  
20 tion Agency as in effect on the date  
21 on which the engine is remanufac-  
22 tured.

23 “(v) IDLE REDUCTION CONTROL  
24 TECHNOLOGY.—For an idle reduction con-  
25 trol technology, the technology shall be—

1                   “(I) installed on a diesel engine  
2                   or vehicle;

3                   “(II) included on a list of verified  
4                   retrofit technologies maintained by  
5                   the Environmental Protection Agency  
6                   or the California Air Resources  
7                   Board; and

8                   “(III) certified by the installer as  
9                   having been installed in accordance  
10                  with the specifications included on the  
11                  list referred to in subclause (II) for  
12                  achieving a reduction in 1 or more air  
13                  quality criteria for air pollutants  
14                  under section 109 of the Clean Air  
15                  Act (42 U.S.C. 7409).

16                  “(5) ELIGIBLE ENTITY.—The term ‘eligible en-  
17                  tity’ means an entity that has entered into a prime  
18                  contract or agreement with a State to carry out a  
19                  covered highway construction project.

20                  “(6) OFF-ROAD DIESEL EQUIPMENT.—

21                  “(A) IN GENERAL.—The term ‘off-road  
22                  diesel equipment’ means a vehicle, including  
23                  covered equipment, that is—

24                          “(i) powered by a nonroad diesel en-  
25                          gine of not less than 50 horsepower; and



1 “(ii) not intended for highway use.

2 “(B) INCLUSIONS.—The term ‘off-road  
3 diesel equipment’ includes a backhoe, bulldozer,  
4 compressor, crane, excavator, generator, and  
5 similar equipment.

6 “(C) EXCLUSIONS.—The term ‘off-road  
7 diesel equipment’ does not include a locomotive  
8 or marine vessel.

9 “(7) ON-ROAD DIESEL EQUIPMENT.—The term  
10 ‘on-road diesel equipment’ means any self-propelled  
11 vehicle that—

12 “(A) operates on diesel fuel;

13 “(B) is designed to transport persons or  
14 property on a street or highway; and

15 “(C) has a gross vehicle weight rating of at  
16 least 14,000 pounds.

17 “(8) PM<sub>2.5</sub> NONATTAINMENT OR MAINTENANCE  
18 AREA.—The term ‘PM<sub>2.5</sub> nonattainment or mainte-  
19 nance area’ means a nonattainment or maintenance  
20 area designated under section 107(d)(6) of the  
21 Clean Air Act (42 U.S.C. 7407(d)(6)).

22 “(b) HIGHWAY CONSTRUCTION PROJECTS FOR PM<sub>2.5</sub>  
23 NONATTAINMENT AND MAINTENANCE AREAS.—Subject  
24 to subsection (c)(2), all covered equipment used on a cov-  
25 ered highway construction project within a PM<sub>2.5</sub> non-

1 attainment or maintenance area shall have installed and  
2 employ diesel emission control technology.

3 “(c) FUNDING FOR COSTS OF ACQUIRING AND IN-  
4 STALLING EMISSION CONTROL TECHNOLOGY.—

5 “(1) IN GENERAL.—The Secretary shall ap-  
6 prove as part of the Federal share of the cost of a  
7 covered highway construction project an amount  
8 equal to the amount required to be expended under  
9 paragraph (2) for the purpose of acquiring and in-  
10 stalling diesel emission control technology.

11 “(2) REQUIRED EXPENDITURE.—A State shall  
12 be in compliance with subsection (b) with respect to  
13 a covered highway construction project, if, in order  
14 to comply with subsection (b), the State expends an  
15 amount that is equal to the lesser of—

16 “(A) 1 percent of the cost of the project;

17 or

18 “(B) the amount necessary to install diesel  
19 emission control technology on all covered  
20 equipment used on the project.

21 “(3) USE OF AMOUNTS.—A State may use  
22 amounts provided to the State under section 149 to  
23 meet the requirements of subsection (b).

24 “(d) IMPLEMENTATION.—

1           “(1) PLAN FOR ELIGIBLE ENTITIES.—As soon  
2 as practicable after the date on which a State  
3 awards a construction contract for a covered high-  
4 way construction project to an eligible entity, the eli-  
5 gible entity shall submit to the State a written plan  
6 that includes—

7                   “(A) an estimate of the quantity of equip-  
8 ment that the eligible entity intends to operate  
9 onsite;

10                   “(B) any relevant information on each  
11 piece of equipment the eligible entity intends to  
12 operate onsite, including—

13                           “(i) the vehicle serial number, identi-  
14 fier, type, manufacturer, model, and model  
15 year; and

16                           “(ii) the engine serial number, manu-  
17 facturer, model, engine family, model year,  
18 horsepower, and displacement;

19                   “(C) an estimate of the number of hours  
20 that the eligible entity expects to operate each  
21 piece of equipment onsite;

22                   “(D) the options for modifying any covered  
23 equipment to employ diesel emission control  
24 technology, including—

1           “(i) an itemized estimate of the rea-  
2           sonable expected cost of modifying each  
3           piece of covered equipment to reduce the  
4           emissions of that equipment;

5           “(ii) a reasonable estimate of the  
6           emission reduction that would directly re-  
7           sult from each modification;

8           “(iii) a reasonable estimate of the  
9           time required to perform each modifica-  
10          tion; and

11          “(iv) a reasonable estimate of the im-  
12          pact that each modification would have on  
13          the schedule of the covered highway con-  
14          struction project; and

15          “(E) at the discretion of the eligible entity,  
16          the options for modifying equipment that is not  
17          covered equipment to employ diesel emission  
18          control technology, including the estimates re-  
19          quired under clauses (i), (ii), (iii), and (iv) of  
20          subparagraph (D).

21          “(2) SUPPLEMENTAL PLAN FOR SUBCONTRAC-  
22          TORS.—If the total estimated cost of the modifica-  
23          tions described in paragraph (1)(D) that is sub-  
24          mitted by an eligible entity to a State in accordance  
25          with paragraph (1) is less than the amount required

1 to be expended by the eligible entity under sub-  
2 section (c)(2)(A), the eligible entity shall submit to  
3 the State a supplemental written plan that includes,  
4 with respect to the equipment that a subcontractor  
5 of the eligible entity intends to operate onsite, the  
6 information required to be submitted under para-  
7 graph (1).

8 “(3) BIDDER REQUIREMENTS.—By change  
9 order and in accordance with the requirements and  
10 procedures of this subsection, a State shall require  
11 the successful bidder of a covered highway construc-  
12 tion project to install and use diesel emission control  
13 technology on the pieces of covered equipment se-  
14 lected by the State as having the greatest potential  
15 of meeting the requirements of subsection (b).

16 “(4) STRUCTURE OF CHANGE ORDER.—A State  
17 may structure a change order as the State deter-  
18 mines to be necessary, if the State determines that  
19 the change order does not—

20 “(A) materially delay the commencement  
21 of construction of the covered highway con-  
22 struction project;

23 “(B) materially increase the time required  
24 to carry out the covered highway construction  
25 project;

1           “(C) cause any material interruption of the  
2 covered highway construction project;

3           “(D) increase any risk to the safety or  
4 health of any construction worker of the cov-  
5 ered highway construction project; or

6           “(E) result in the successful bidder for the  
7 covered highway construction project recovering  
8 less than 100 percent of the cost of imple-  
9 menting each diesel emission control technology.

10       “(e) SAVINGS CLAUSE.—Nothing in this section  
11 modifies or otherwise affects any authority or restrictions  
12 established under the Clean Air Act (42 U.S.C. 7401 et  
13 seq.).”.

14       (b) APPLICABILITY.—Section 330 of title 23, United  
15 States Code, as added by this section, shall apply to each  
16 highway construction project that is initiated, as deter-  
17 mined by the Secretary, after the date that is 30 days  
18 after the date of enactment of this Act.

19       (c) TECHNICAL AMENDMENT.—The analysis for  
20 chapter 3 of title 23, United States Code is amended by  
21 adding at the end the following:

“Sec. 330. Construction equipment and vehicles.”.

1 **SEC. 3. PUBLIC TRANSPORTATION CONSTRUCTION**  
 2 **PROJECTS.**

3 (a) IN GENERAL.—Chapter 53 of title 49, United  
 4 States Code, is amended by adding at the end the fol-  
 5 lowing:

6 **“§ 5341. Construction equipment and vehicles**

7 “(a) DEFINITIONS.—In this section:

8 “(1) CHANGE ORDER.—The term ‘change  
 9 order’ means a written document that—

10 “(A) modifies any provision of a contract  
 11 to carry out a covered public transportation  
 12 construction project; and

13 “(B) is issued by a recipient that is a  
 14 party to that contract to implement a diesel  
 15 emission control technology.

16 “(2) COVERED EQUIPMENT.—

17 “(A) IN GENERAL.—The term ‘covered  
 18 construction equipment’ means any off-road  
 19 diesel equipment and any on-road diesel equip-  
 20 ment that is operated on a covered public trans-  
 21 portation construction project for not less than  
 22 80 hours over the life of the project.

23 “(B) EXCLUSIONS.—The term ‘covered  
 24 construction equipment’ does not include—

25 “(i) equipment with an engine that  
 26 meets or exceeds any particulate matter

1 emission standards for the applicable en-  
2 gine power group issued by the Environ-  
3 mental Protection Agency relating to par-  
4 ticulate matter exhaust for new diesel en-  
5 gines that are in effect on the date on  
6 which the public transportation construc-  
7 tion project commences;

8 “(ii) equipment with a diesel exhaust  
9 control technology that was installed dur-  
10 ing the 6-year period ending on the date of  
11 award of the contract for the covered pub-  
12 lic transportation construction project;

13 “(iii) large cranes, such as Sky cranes  
14 or Link Belt cranes, that are responsible  
15 for critical lift operations, if the emission  
16 control technology would adversely affect  
17 lift capacity; and

18 “(iv) additional or replacement equip-  
19 ment brought on the job site after work  
20 has commenced to prevent or remedy harm  
21 to human beings or to address an emer-  
22 gency.

23 “(3) COVERED PUBLIC TRANSPORTATION CON-  
24 STRUCTION PROJECT.—



1           “(A) IN GENERAL.—The term ‘covered  
2 public transportation construction project’  
3 means a project that receives Federal funding  
4 for the construction of a public transportation  
5 facility.

6           “(B) INCLUSIONS.—The term ‘covered  
7 public transportation construction project’ in-  
8 cludes—

9                   “(i) projects funded, in whole or in  
10 part, by amounts from the Mass Transit  
11 Account of the Highway Trust Fund; and

12                   “(ii) projects funded, in whole or in  
13 part, by amounts from the general fund of  
14 the Treasury.

15           “(4) DIESEL EMISSION CONTROL TECH-  
16 NOLOGY.—

17           “(A) IN GENERAL.—Subject to subpara-  
18 graph (B), the term ‘diesel emission control  
19 technology’ means a technology that—

20                   “(i) is—

21                           “(I) a diesel exhaust control tech-  
22 nology;

23                           “(II) a diesel engine upgrade;

24                           “(III) a diesel engine repower; or

1                   “(IV) an idle reduction control  
2                   technology; and

3                   “(ii) reduces PM<sub>2.5</sub> emissions from  
4                   covered equipment by—

5                   “(I) not less than 85 percent  
6                   control of any emission of particulate  
7                   matter; or

8                   “(II) the maximum achievable re-  
9                   duction of any emission of particulate  
10                  matter.

11                  “(B) CRITERIA.—

12                  “(i) IN GENERAL.—To be considered  
13                  a ‘diesel emission control technology’, the  
14                  technology described in subparagraph  
15                  (A)(i) shall meet the criteria described in  
16                  clauses (ii) through (v), as applicable.

17                  “(ii) DIESEL EXHAUST CONTROL  
18                  TECHNOLOGY.—For a diesel exhaust con-  
19                  trol technology, the technology shall be—

20                  “(I) installed on a diesel engine  
21                  or vehicle;

22                  “(II) included on a list of verified  
23                  retrofit technologies maintained by  
24                  the Environmental Protection Agency

1 or the California Air Resources  
2 Board; and

3 “(III) certified by the installer as  
4 having been installed in accordance  
5 with the specifications included on the  
6 list referred to in subclause (II) for  
7 achieving a reduction in 1 or more air  
8 quality criteria for air pollutants  
9 under section 109 of the Clean Air  
10 Act (42 U.S.C. 7409).

11 “(iii) DIESEL ENGINE UPGRADE.—  
12 For a diesel engine upgrade, the upgrade  
13 shall be performed on an engine that is—

14 “(I) rebuilt using new compo-  
15 nents that collectively appear as a sys-  
16 tem, such as a kit, on a list of verified  
17 retrofit technologies maintained by  
18 the Environmental Protection Agency  
19 or the California Air Resources  
20 Board; and

21 “(II) certified by the installer to  
22 have been installed in accordance with  
23 the specifications included on the list  
24 referred to in subclause (I) for achiev-  
25 ing a reduction in 1 or more air qual-

1           ity criteria for air pollutants under  
2           section 109 of the Clean Air Act (42  
3           U.S.C. 7409).

4           “(iv) DIESEL ENGINE REPOWER.—

5           For a diesel engine repower, the repower  
6           shall be conducted on a new or remanufac-  
7           tured diesel engine that is—

8                   “(I) installed as a replacement  
9                   for an engine used in the existing  
10                  equipment, subject to the condition  
11                  that the replaced engine is—

12                           “(aa) used for scrap;

13                           “(bb) permanently disabled;

14                           or

15                           “(cc) returned to the origi-  
16                           nal manufacturer for remanufac-  
17                           ture to a PM level that is at least  
18                           equivalent to a Tier 2 emission  
19                           standard; and

20                   “(II) certified by the engine man-  
21                   ufacturer as meeting the emission  
22                   standards for new vehicles for the ap-  
23                   plicable engine power group estab-  
24                   lished by the Environmental Protec-  
25                   tion Agency as in effect on the date

1 on which the engine is remanufac-  
2 tured.

3 “(v) IDLE REDUCTION CONTROL  
4 TECHNOLOGY.—For an idle reduction con-  
5 trol technology, the technology shall be—

6 “(I) installed on a diesel engine  
7 or vehicle;

8 “(II) included on a list of verified  
9 retrofit technologies maintained by  
10 the Environmental Protection Agency  
11 or the California Air Resources  
12 Board; and

13 “(III) certified by the installer as  
14 having been installed in accordance  
15 with the specifications included on the  
16 list referred to in subclause (II) for  
17 achieving a reduction in 1 or more air  
18 quality criteria for air pollutants  
19 under section 109 of the Clean Air  
20 Act (42 U.S.C. 7409).

21 “(5) ELIGIBLE ENTITY.—The term ‘eligible en-  
22 tity’ means an entity that has entered into a prime  
23 contract or agreement with a recipient to carry out  
24 a covered public transportation construction project.

25 “(6) OFF-ROAD DIESEL EQUIPMENT.—

1           “(A) IN GENERAL.—The term ‘off-road  
2 diesel equipment’ means a vehicle, including  
3 covered equipment, that is—

4                   “(i) powered by a nonroad diesel en-  
5 gine of not less than 50 horsepower; and

6                   “(ii) not intended for highway use.

7           “(B) INCLUSIONS.—The term ‘off-road  
8 diesel equipment’ includes a backhoe, bulldozer,  
9 compressor, crane, excavator, generator, and  
10 similar equipment.

11           “(C) EXCLUSIONS.—The term ‘off-road  
12 diesel equipment’ does not include a locomotive  
13 or marine vessel.

14           “(7) ON-ROAD DIESEL EQUIPMENT.—The term  
15 ‘on-road diesel equipment’ means any self-propelled  
16 vehicle that—

17                   “(A) operates on diesel fuel;

18                   “(B) is designed to transport persons or  
19 property on a street or highway; and

20                   “(C) has a gross vehicle weight rating of at  
21 least 14,000 pounds.

22           “(8) PM<sub>2.5</sub> NONATTAINMENT OR MAINTENANCE  
23 AREA.—The term ‘PM<sub>2.5</sub> nonattainment or mainte-  
24 nance area’ means a nonattainment or maintenance

1 area designated under section 107(d)(6) of the  
2 Clean Air Act (42 U.S.C. 7407(d)(6)).

3 “(9) RECIPIENT.—The term ‘recipient’ means  
4 an entity that receives Federal funding to carry out  
5 a covered public transportation construction project.

6 “(b) PUBLIC TRANSPORTATION CONSTRUCTION  
7 PROJECTS FOR PM<sub>2.5</sub> NONATTAINMENT AND MAINTENANCE  
8 AREAS.—Subject to subsection (c)(2), all covered  
9 equipment used on a covered public transportation con-  
10 struction project within a PM<sub>2.5</sub> nonattainment or mainte-  
11 nance area shall have installed and employ diesel emission  
12 control technology.

13 “(c) FUNDING FOR COSTS OF ACQUIRING AND IN-  
14 STALLING EMISSION CONTROL TECHNOLOGY.—

15 “(1) IN GENERAL.—The Secretary shall ap-  
16 prove as part of the Federal share of the cost of a  
17 covered public transportation construction project an  
18 amount equal to the amount required to be expended  
19 under paragraph (2) for the purpose of acquiring  
20 and installing diesel emission control technology.

21 “(2) REQUIRED EXPENDITURE.—A recipient  
22 shall be in compliance with subsection (b) with re-  
23 spect to a covered public transportation construction  
24 project if, in order to comply with subsection (b), the

1 recipient expends an amount that is equal to the  
2 lesser of—

3 “(A) 1 percent of the cost of the project;

4 or

5 “(B) the amount necessary to install emis-  
6 sion control technology on all covered equip-  
7 ment used on the project.

8 “(3) USE OF AMOUNTS.—A recipient may use  
9 amounts provided to the recipient under section 149  
10 of title 23, United States Code, to meet the require-  
11 ments of subsection (b).

12 “(d) IMPLEMENTATION.—

13 “(1) PLAN FOR ELIGIBLE ENTITIES.—As soon  
14 as practicable after the date on which a recipient  
15 awards a construction contract for a covered public  
16 transportation construction project to an eligible en-  
17 tity, the eligible entity shall submit to the recipient  
18 a written plan that includes—

19 “(A) an estimate of the quantity of equip-  
20 ment that the eligible entity intends to operate  
21 onsite;

22 “(B) any relevant information on each  
23 piece of equipment the eligible entity intends to  
24 operate onsite, including—



1                   “(i) the vehicle serial number, identi-  
2                   fier, type, manufacturer, model, and model  
3                   year; and

4                   “(ii) the engine serial number, manu-  
5                   facturer, model, engine family, model year,  
6                   horsepower, and displacement;

7                   “(C) an estimate of the number of hours  
8                   that the eligible entity expects to operate each  
9                   piece of equipment onsite;

10                  “(D) the options for modifying any covered  
11                  equipment to employ diesel emission control  
12                  technology, including—

13                       “(i) an itemized estimate of the rea-  
14                       sonable expected cost of modifying each  
15                       piece of covered equipment to reduce the  
16                       emissions of that equipment;

17                       “(ii) a reasonable estimate of the  
18                       emission reduction that would directly re-  
19                       sult from each modification;

20                       “(iii) a reasonable estimate of the  
21                       time required to perform each modifica-  
22                       tion; and

23                       “(iv) a reasonable estimate of the im-  
24                       pact that each modification would have on

1           the schedule of the covered public trans-  
2           portation construction project; and

3           “(E) at the discretion of the eligible entity,  
4           the options for modifying equipment that is not  
5           covered equipment to employ diesel emission  
6           control technology, including the estimates re-  
7           quired under clauses (i), (ii), (iii), and (iv) of  
8           subparagraph (D).

9           “(2) SUPPLEMENTAL PLAN FOR SUBCONTRAC-  
10          TORS.—If the total estimated cost of the modifica-  
11          tions described in paragraph (1)(D) that is sub-  
12          mitted by an eligible entity to a recipient in accord-  
13          ance with paragraph (1) is less than the amount re-  
14          quired to be expended by the eligible entity under  
15          subsection (c)(2)(A), the eligible entity shall submit  
16          to the recipient a supplemental written plan that in-  
17          cludes, with respect to the equipment that a subcon-  
18          tractor of the eligible entity intends to operate on-  
19          site, the information required to be submitted under  
20          paragraph (1).

21          “(3) BIDDER REQUIREMENTS.—By change  
22          order and in accordance with the requirements and  
23          procedures of this subsection, a recipient shall re-  
24          quire the successful bidder of a covered public trans-  
25          portation construction project to install and employ

1 diesel emission control technology on the pieces of  
2 covered equipment selected by the recipient as hav-  
3 ing the greatest potential of meeting the require-  
4 ments of subsection (b).

5 “(4) STRUCTURE OF CHANGE ORDER.—A re-  
6 cipient may structure a change order as the recipi-  
7 ent determines to be necessary, if the recipient de-  
8 termines that the change order does not—

9 “(A) materially delay the commencement  
10 of construction of the covered public transpor-  
11 tation construction project;

12 “(B) materially increase the time required  
13 to carry out the covered public transportation  
14 construction project;

15 “(C) cause any material interruption of the  
16 covered public transportation construction  
17 project;

18 “(D) increase any risk to the safety or  
19 health of any construction worker of the cov-  
20 ered public transportation construction project;  
21 or

22 “(E) result in the successful bidder for the  
23 covered public transportation construction  
24 project recovering less than 100 percent of the

1 cost of implementing each diesel emission con-  
2 trol technology.

3 “(e) SAVINGS CLAUSE.—Nothing in this section shall  
4 be construed to modify or otherwise affect any authority  
5 or restriction established under the Clean Air Act (42  
6 U.S.C. 7401 et seq.).”.

7 (b) APPLICABILITY.—Section 5341(b) of title 49,  
8 United States Code, as added by this section, shall apply  
9 to each public transportation construction project that is  
10 initiated, as determined by the Secretary of Transpor-  
11 tation, after the date that is 30 days after the date of  
12 enactment of this Act.

13 (c) CLERICAL AMENDMENT.—The analysis for chap-  
14 ter 53 of title 49, United States Code, is amended by add-  
15 ing at the end the following:

“5341. Construction equipment and vehicles.”.

16 **SEC. 4. REPORT TO CONGRESS.**

17 (a) IN GENERAL.—Not later than 1 year after the  
18 date of enactment of this Act, the Secretary of Transpor-  
19 tation shall submit to the Committee on Transportation  
20 and Infrastructure of the House of Representatives, the  
21 Committee on Environment and Public Works of the Sen-  
22 ate, and the Committee on Banking, Housing, and Urban  
23 Affairs of the Senate a report that describes the manners  
24 by which section 330 of title 23, United States Code (as  
25 added by section 2 of this Act) and section 5341 of title

1 49, United States Code (as added by section 3 of this Act)  
2 have been implemented, including the quantity of covered  
3 equipment serviced under those sections and the costs as-  
4 sociated with servicing the covered equipment.

5 (b) INFORMATION FROM STATES.—The Secretary  
6 shall require States and recipients, as a condition of re-  
7 ceiving amounts under this Act or under the provisions  
8 of any amendments made by this Act, to submit to the  
9 Secretary any information that the Secretary determines  
10 necessary to complete the report under subsection (a).

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