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111TH CONGRESS
1ST SESSION

S. 791

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

IN THE SENATE OF THE UNITED STATES

APRIL 2, 2009

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

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Surface Transportation Safety Act of 2009''.

SEC. 2. WORKER INJURY PREVENTION AND FREE FLOW OF VEHICULAR TRAFFIC.

The Secretary of Transportation shall modify regulations issued pursuant to section 1402 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act:

A Legacy for Users (23 U.S.C. 401 note; 119 Stat. 1227) to allow fire services personnel that are subject to the regulations to wear apparel meeting the high visibility requirements set forth in NFPA 1971–2007 (Standard on Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting) in lieu of apparel meeting the requirements set forth in ANSI/ISEA 107–2004.

SEC. 3. POSITIVE PROTECTIVE DEVICES.

Not later than 60 days after the date of enactment of this Act, the Secretary of Transportation shall modify section 630.1108(a) of title 23, Code of Federal Regulations, to ensure that—

(1) at a minimum, positive protective measures are used to separate workers on highway construction projects from motorized traffic in all work zones conducted under traffic in areas that offer workers no means of escape (e.g., tunnels, bridges, etc.), unless an engineering analysis determines otherwise;

(2) temporary longitudinal traffic barriers are used to protect workers on highway construction projects in stationary work zones lasting 2 weeks or more when the project design speed is 45 miles per hour or greater and the nature of the work requires workers to be within one lane-width from the edge of a live travel lane, unless—

(A) an engineering analysis determines otherwise, or

(B) the project is located in a State with a population density of 20 or fewer persons per square mile and the project is outside of an urbanized area and the road's annual average daily traffic (AADT) load is less than 100 vehicles per hour; and

(3) when positive protective devices are necessary for highway construction projects, these devices are paid for on a unit pay basis, unless doing so would create a conflict with innovative contracting approaches, such as design-build or some performance-based contracts where the contractor is paid to assume a certain risk allocation and payment is generally made on a lump sum basis.

SEC. 4. USE OF PATENTED OR PROPRIETARY ITEMS TO FURTHER STATE STRATEGIC HIGHWAY SAFETY PLANS.

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

"(h) USE OF PATENTED OR PROPRIETARY ITEMS TO FURTHER STATE STRATEGIC HIGHWAY SAFETY PLANS.—

"(1) The Secretary shall approve the use of Federal funds made available to carry out this chapter in the payment of patented or proprietary items if the State transportation department certifies, based on the documented analysis and professional judgment of qualified State transportation officials, that—

"(A) the patented or proprietary item will contribute to the accomplishment of one or more goals set forth in the State's strategic highway safety plan;

"(B) no equally suitable alternative item exists;

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

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

"(2) The authority to utilize patented or proprietary items provided in paragraph (1) is in addition to authority to utilize such products that exists under this section and under 23 CFR 635.411 as in effect on March 2, 2009. The Secretary may not re-

vise said regulation to reduce authority to utilize patented or proprietary items.''.

SEC. 5. MINIMUM LEVEL OR RETROREFLECTIVITY FOR PAVEMENT MARKINGS.

Not later than October 1, 2010, the Secretary of Transportation shall revise the Manual on Uniform Traffic Control Devices to include a standard for a minimum level of retroreflectivity that must be maintained for pavement markings, which shall apply to all roads open to public travel.

SEC. 6. HIGHWAY SAFETY IMPROVEMENT PROGRAM.

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

> ''(xi) Installation, replacement, and upgrade of highway signs and pavement markings, including any upgrade of materials and the implementation of any assessment or management method designed to meet a State-established performance standard, Federal regulation, or requirement contained in the Manual on Uniform Traffic Control Devices relating to minimum levels of retroreflectivity.''.

(b) MAINTAINING MINIMUM LEVELS OF RETROREFLECTIVITY.—

(1) 23 U.S.C. 148(a) is amended by adding at the end thereof the following paragraph—

''(7) PROJECT TO MAINTAIN MINIMUM LEVELS OF RETROREFLECTIVITY.—The term 'project to maintain minimum levels of retroreflectivity' means a project undertaken pursuant to provisions of the Manual on Uniform Traffic Control Devices requiring public agencies to use an assessment or management method that is designed to maintain highway sign or pavement marking retroreflectivity at or above prescribed minimum levels.''.

(2) 23 U.S.C. 148(d)(1) is amended by striking ''(B)'' and inserting in lieu thereof ''(C)'' and by inserting between subparagraphs (A) and (C), as redesignated herein, the following—

''(B) any project to maintain minimum levels of retroreflectivity on any public road, whether or not such project is included in the State strategic highway safety plan; or''.

(3) 23 U.S.C. 120(c)(1) is amended by inserting after ''signalization,'' the following:

''maintaining minimum levels of retroreflectivity of highway signs or pavement markings,''.

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

(a) IN GENERAL.—The Secretary of Transportation shall carry out a program to improve traffic signs and pavement markings in all States (as such term is defined in section 101 of title 23, United States Code) in a manner consistent with the recommendations included in the publication of the Federal Highway Administration entitled ''Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians (FHWA–RD–01–103)'' and dated October 2001.

(b) APPORTIONMENT OF FUNDS.—On October 1 of each fiscal year, the Secretary shall apportion sums authorized to be appropriated to carry out this section for such fiscal year among the several States using the overall formula share for each State for fiscal year 2009 for all funds subject to section 105 of title 23, United States Code, including equity bonus funds, obtained after application of said section 105 for such fiscal year.

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

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) $90,000,000

to carry out this section for each of fiscal years 2010 through 2014.

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

SEC. 8. RAIL-HIGHWAY GRADE CROSSINGS.

(a)(1) TRANSPARENCY OF STATE SURVEY AND SCHEDULE OF RAILWAY-HIGHWAY GRADE CROSSINGS.—Section 130(d) of title 23, United States Code, is amended by adding at the end the following: ''Each State shall make surveys and schedules compiled under this subsection available to the public through the Internet Web site of the State.''.

(2) The effective date of this subsection shall be 180 days after the date of enactment of this subsection.

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

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

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

(2) in subsections (f)(1) and (f)(3) by striking "set aside" and inserting "made available".

SEC. 9. REVIEW OF SAFETY OF RAIL-HIGHWAY GRADE CROSSINGS.

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

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

(1) assess, at a minimum, safety conditions, average daily traffic, proximity to schools, past accidents, fatalities, and possible safety improvements; and

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

(c) PRIORITY LIST.—Based on the information collected in conducting the comprehensive review under subsection (a), the Secretary shall compile, maintain, and submit to Congress a list of the 10 highway-rail grade crossings in each State that have the greatest need for safety improvements.

(d) INCLUSION IN RAIL-HIGHWAY GRADE CROSSING DATABASE.—The Secretary shall include the information

collected in conducting the comprehensive review under subsection (a), and the priority list submitted under subsection (c), in the national database on the safety of highway-rail grade crossings required under section 20156(a) of title 49, United States Code, as added by section 10 of this Act.

(e) UPDATE.—The Secretary shall update the comprehensive review under subsection (a) at least once every 4 years.

(f) AVAILABILITY OF INFORMATION.—The Secretary shall make priority lists and databases compiled under this section available to the public through the Internet Web site of the Department of Transportation.

(g) LIMITATION ON USE OF DATA IN JUDICIAL PROCEEDINGS.—Notwithstanding any other provision of law, any report, review, survey, schedule, list, data, or information or document of any kind compiled or collected pursuant to this section, including but not limited to for the purpose of identifying, evaluating, or planning the safety enhancement of a potential accident site or railway-highway crossing pursuant to this section shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages arising from any occurrence at

a location mentioned or addressed in such report, review, survey, schedule, list, or data.

SEC. 10. RAIL-HIGHWAY GRADE CROSSING SAFETY.

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

"SEC. 20156. RAIL-HIGHWAY GRADE CROSSING SAFETY INFORMATION.

''(a) ESTABLISHMENT OF DATABASE.—The Secretary of Transportation shall establish and maintain a national database of information on the safety of highway-rail grade crossings in the United States.

''(b) ACCIDENT AND INCIDENT REPORTS TO BE INCLUDED IN DATABASE.—The Secretary shall include in the database under subsection (a) information from incident reports filed with the Federal Railroad Administration regarding accidents and other safety-related incidents that have occurred at highway-rail grade crossings.''.

(b) CLERICAL AMENDMENT.—The analysis for subchapter II of such chapter is amended by adding at the end the following:

''20156. Rail-highway grade crossing safety information.''.

SEC. 11. RURAL STATE INITIATIVE.

(a) IN GENERAL.—To address the problem of a significant portion of traffic fatalities occurring on highways in rural areas, the Secretary of Transportation shall, for

each fiscal year beginning with fiscal year 2010, allocate $20 million to each State with a population density of less than 20 persons per square mile (based on the most recent decentennial census), for use by such States for projects and programs and activities eligible under 23 U.S.C. 148 and not located in an urbanized area as defined in section 134(b)(6), title 23, United States Code.

(b) Such allocations shall not be considered an apportionment within the meaning of section 105 of title 23, United States Code, or considered a ''specific program'' within the meaning of said section 105.

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

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

(e) APPLICABILITY OF TITLE 23.—Except as provided by subsection (b) of this section, funds made available to carry out this section shall be available for obliga-

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

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