

110TH CONGRESS  
2D SESSION

# H. R. 6757

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

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## IN THE HOUSE OF REPRESENTATIVES

JULY 31, 2008

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

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## 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 2008”.

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 (e.g., tunnels, bridges, etc.), un-  
18 less 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

1 of a live travel lane, unless an engineering analysis  
2 determines otherwise; and

3 (3) when positive protective devices are nec-  
4 essary for highway construction projects, these de-  
5 vices are paid for on a unit pay basis, unless doing  
6 so would create a conflict with innovative con-  
7 tracting approaches, such as design-build or some  
8 performance-based contracts where the contractor is  
9 paid to assume a certain risk allocation and payment  
10 is generally made on a lump sum basis.

11 **SEC. 4. USE OF PATENTED OR PROPRIETARY ITEMS TO**  
12 **FURTHER STATE STRATEGIC HIGHWAY SAFE-**  
13 **TY PLANS.**

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

16 “(h) USE OF PATENTED OR PROPRIETARY ITEMS TO  
17 FURTHER STATE STRATEGIC HIGHWAY SAFETY  
18 PLANS.—The Secretary shall approve the use of Federal  
19 funds made available to carry out this chapter in the pay-  
20 ment of patented or proprietary items if the State trans-  
21 portation department certifies, based on the documented  
22 analysis and professional judgment of qualified State  
23 transportation officials, that—

24 “(1) the patented or proprietary item will con-  
25 tribute to the accomplishment of one or more goals

1 set forth in the State’s strategic highway safety  
2 plan;

3 “(2) no equally suitable alternative item exists;

4 “(3) any specified patented or proprietary item  
5 will be clearly identified as a patented or proprietary  
6 item in bid documents; and

7 “(4) any patented or proprietary item specified  
8 pursuant to this certification will be available in suf-  
9 ficient quantity to complete any project identified in  
10 bid documents.”.

11 **SEC. 5. MINIMUM LEVEL OF RETROREFLECTIVITY FOR**  
12 **PAVEMENT MARKINGS.**

13 Not later than October 1, 2010, the Secretary of  
14 Transportation shall revise the Manual on Uniform Traf-  
15 fic Control Devices to include a standard for a minimum  
16 level of retroreflectivity that must be maintained for pave-  
17 ment markings, which shall apply to all roads open to pub-  
18 lic travel.

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

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

23 “(xi) Installation, replacement, and  
24 upgrade of highway signs and pavement  
25 markings, including any upgrade of mate-

1           rials and the implementation of any assess-  
2           ment or management method designed to  
3           meet a State-established performance  
4           standard, Federal regulation, or require-  
5           ment contained in the Manual on Uniform  
6           Traffic Control Devices relating to min-  
7           imum levels of retroreflectivity.”.

8           (b) MINIMUM LEVELS OF RETROREFLECTIVITY.—  
9           Section 148 of such title is amended by adding at the end  
10          the following:

11          “(i) MINIMUM LEVELS OF RETROREFLECTIVITY.—  
12          Not later than September 30, 2010, the Secretary shall  
13          establish a program to require each State—

14                 “(1) to conduct an assessment for each fiscal  
15                 year of the financial obligations, if any, of each unit  
16                 of local government in the State attributable to a  
17                 national standard for maintaining minimum levels of  
18                 retroreflectivity in traffic signs and pavement mark-  
19                 ings; and

20                 “(2) to provide to each unit of local government  
21                 in the State, out of amounts made available to carry  
22                 out this chapter, funds in an amount not less than  
23                 90 percent of the financial obligations, if any, of the  
24                 unit of local government identified under paragraph  
25                 (1).”.

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

3 (a) IN GENERAL.—The Secretary of Transportation  
4 shall carry out a program to improve traffic signs and  
5 pavement markings in all States (as such term is defined  
6 in section 101 of title 23, United States Code) in a manner  
7 consistent with the recommendations included in the pub-  
8 lication of the Federal Highway Administration entitled  
9 “Guidelines and Recommendations to Accommodate Older  
10 Drivers and Pedestrians 9FHWA–RD–01–103)” and  
11 dated October 2001.

12 (b) APPORTIONMENT OF FUNDS.—On October 1 of  
13 each fiscal year, the Secretary shall apportion sums au-  
14 thorized to be appropriated to carry out this section for  
15 such fiscal year among the several States using the for-  
16 mula set forth in section 104(b)(5) of title 23, United  
17 States Code.

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

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

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

5 **SEC. 8. RAILWAY-HIGHWAY GRADE CROSSINGS.**

6 (a) TRANSPARENCY OF STATE SURVEY AND SCHED-  
7 ULE OF RAILWAY-HIGHWAY GRADE CROSSINGS.—Section  
8 130(d) of title 23, United States Code, is amended by add-  
9 ing at the end the following: “Each State shall make sur-  
10 veys and schedules compiled under this subsection avail-  
11 able to the public through the Internet Web site of the  
12 State.”.

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

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

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

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

1 **SEC. 9. REVIEW OF SAFETY OF HIGHWAY-RAIL GRADE**  
2 **CROSSINGS.**

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

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

9 (1) assess, at a minimum, safety conditions, av-  
10 erage daily traffic, proximity to schools, past acci-  
11 dents, fatalities, and possible safety improvements;  
12 and

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

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

22 (d) INCLUSION IN HIGHWAY-RAIL GRADE CROSSING  
23 DATABASE.—The Secretary shall include the information  
24 collected in conducting the comprehensive review under  
25 subsection (a), and the priority list submitted under sub-  
26 section (c), in the national database on the safety of high-

1 way-rail grade crossings required under section 20156(a)  
2 of title 49, United States Code, as added by section 10  
3 of this Act.

4 (e) UPDATE.—The Secretary shall update the com-  
5 prehensive review under subsection (a) at least once every  
6 4 years.

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

11 (g) LIMITATION ON USE OF DATA IN JUDICIAL PRO-  
12 CEEDINGS.—Notwithstanding any other provision of law,  
13 any report, review, survey, schedule, list, or data compiled  
14 or collected for the purpose of identifying, evaluating, or  
15 planning the safety enhancement of a potential accident  
16 site or railway-highway crossing pursuant to this section  
17 shall not be subject to discovery or admitted into evidence  
18 in a Federal or State court proceeding or considered for  
19 other purposes in any action for damages arising from any  
20 occurrence at a location mentioned or addressed in such  
21 report, review, survey, schedule, list, or data.

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

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

1 **“§ 20156. Highway-rail grade crossing safety informa-**  
2 **tion**

3 “(a) ESTABLISHMENT OF DATABASE.—The Sec-  
4 retary of Transportation shall establish and maintain a  
5 national database of information on the safety of highway-  
6 rail grade crossings in the United States.

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

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

“20156. Highway-rail grade crossing safety information.”.

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