

Subtitle D--Highway Safety

SEC. 1401. HIGHWAY SAFETY IMPROVEMENT PROGRAM.

(a) Safety Improvement.--

(1) In general.--Section 148 of title 23, United States Code, is amended to read as follows:

``Sec. 148. Highway safety improvement program

``(a) Definitions.--In this section, the following definitions apply:

``(1) High risk rural road.--The term `high risk rural road' means any roadway functionally classified as a rural major or minor collector or a rural local road--

``(A) on which the accident rate for fatalities and incapacitating injuries exceeds the statewide average for those functional classes of roadway; or

``(B) that will likely have increases in traffic volume that are likely to create an accident rate for fatalities

[[Page 119 STAT. 1220]]

and incapacitating injuries that exceeds the statewide average for those functional classes of roadway.

``(2) Highway safety improvement program.--The term `highway safety improvement program' means the program carried out under this section.

``(3) Highway safety improvement project.--

``(A) In general.--The term `highway safety improvement project' means a project described in the State strategic highway safety plan that--

``(i) corrects or improves a hazardous road location or feature; or

``(ii) addresses a highway safety problem.

``(B) Inclusions.--The term `highway safety improvement project' includes a project for one or more of the following:

``(i) An intersection safety improvement.

``(ii) Pavement and shoulder widening (including addition of a passing lane to remedy an unsafe condition).

``(iii) Installation of rumble strips or another warning device, if the rumble strips or other warning devices do not adversely affect the safety or mobility of bicyclists, pedestrians, and the disabled.

``(iv) Installation of a skid-resistant surface at an intersection or other location with a high frequency of accidents.

``(v) An improvement for pedestrian or bicyclist safety or safety of the disabled.

``(vi) Construction of any project for the elimination of hazards at a railway-highway crossing that is eligible for funding under section 130, including the separation or

protection of grades at railway-highway crossings.

``(vii) Construction of a railway-highway crossing safety feature, including installation of protective devices.

``(viii) The conduct of a model traffic enforcement activity at a railway-highway crossing.

``(ix) Construction of a traffic calming feature.

``(x) Elimination of a roadside obstacle.

``(xi) Improvement of highway signage and pavement markings.

``(xii) Installation of a priority control system for emergency vehicles at signalized intersections.

``(xiii) Installation of a traffic control or other warning device at a location with high accident potential.

``(xiv) Safety-conscious planning.

``(xv) Improvement in the collection and analysis of crash data.

``(xvi) Planning integrated interoperable emergency communications equipment, operational activities, or traffic enforcement activities (including police assistance) relating to workzone safety.

``(xvii) Installation of guardrails, barriers (including barriers between construction work zones

[[Page 119 STAT. 1221]]

and traffic lanes for the safety of motorists and workers), and crash attenuators.

``(xviii) The addition or retrofitting of structures or other measures to eliminate or reduce accidents involving vehicles and wildlife.

``(xix) Installation and maintenance of signs (including fluorescent, yellow-green signs) at pedestrian-bicycle crossings and in school zones.

``(xx) Construction and yellow-green signs at pedestrian-bicycle crossings and in school zones.

``(xxi) Construction and operational improvements on high risk rural roads.

``(4) Safety project under any other section.--

``(A) In general.--The term `safety project under any other section' means a project carried out for the purpose of safety under any other section of this title.

``(B) Inclusion.--The term `safety project under any other section' includes a project to promote the awareness of the public and educate the public concerning highway safety matters (including motorcyclist safety) and a project to enforce highway safety laws.

``(5) State highway safety improvement program.--The term `State highway safety improvement program' means projects or strategies included in the State strategic highway safety plan

carried out as part of the State transportation improvement program under section 135(g).

``(6) State strategic highway safety plan.--The term `State strategic highway safety plan' means a plan developed by the State transportation department that--

``(A) is developed after consultation with--

``(i) a highway safety representative of the Governor of the State;

``(ii) regional transportation planning organizations and metropolitan planning organizations, if any;

``(iii) representatives of major modes of transportation;

``(iv) State and local traffic enforcement officials;

``(v) persons responsible for administering section 130 at the State level;

``(vi) representatives conducting Operation Lifesaver;

``(vii) representatives conducting a motor carrier safety program under section 31102, 31106, or 31309 of title 49;

``(viii) motor vehicle administration agencies; and

``(ix) other major State and local safety stakeholders;

``(B) analyzes and makes effective use of State, regional, or local crash data;

``(C) addresses engineering, management, operation, education, enforcement, and emergency services elements (including integrated, interoperable emergency communications) of highway safety as key factors in evaluating highway projects;

``(D) considers safety needs of, and high-fatality segments of, public roads;

[[Page 119 STAT. 1222]]

``(E) considers the results of State, regional, or local transportation and highway safety planning processes;

``(F) describes a program of projects or strategies to reduce or eliminate safety hazards;

``(G) is approved by the Governor of the State or a responsible State agency; and

``(H) is consistent with the requirements of section 135(g).

``(b) Program.--

``(1) In general.--The Secretary shall carry out a highway safety improvement program.

``(2) Purpose.--The purpose of the highway safety improvement program shall be to achieve a significant reduction in traffic fatalities and serious injuries on public roads.

``(c) Eligibility.--

``(1) In general.--To obligate funds apportioned under

section 104(b)(5) to carry out this section, a State shall have in effect a State highway safety improvement program under which the State--

``(A) develops and implements a State strategic highway safety plan that identifies and analyzes highway safety problems and opportunities as provided in paragraph (2);

``(B) produces a program of projects or strategies to reduce identified safety problems;

``(C) evaluates the plan on a regular basis to ensure the accuracy of the data and priority of proposed improvements; and

``(D) <<NOTE: Reports.>> submits to the Secretary an annual report that--

``(i) describes, in a clearly understandable fashion, not less than 5 percent of locations determined by the State, using criteria established in accordance with paragraph (2)(B)(ii), as exhibiting the most severe safety needs; and

``(ii) contains an assessment of--

``(I) potential remedies to hazardous locations identified;

``(II) estimated costs associated with those remedies; and

``(III) impediments to implementation other than cost associated with those remedies.

``(2) Identification and analysis of highway safety problems and opportunities.--As part of the State strategic highway safety plan, a State shall--

``(A) have in place a crash data system with the ability to perform safety problem identification and countermeasure analysis;

``(B) based on the analysis required by subparagraph (A)--

``(i) identify hazardous locations, sections, and elements (including roadside obstacles, railway-highway crossing needs, and unmarked or poorly marked roads) that constitute a danger to motorists (including motorcyclists), bicyclists, pedestrians, and other highway users; and

``(ii) using such criteria as the State determines to be appropriate, establish the relative severity of

[[Page 119 STAT. 1223]]

those locations, in terms of accidents, injuries, deaths, traffic volume levels, and other relevant data;

``(C) adopt strategic and performance-based goals that--

``(i) address traffic safety, including behavioral and infrastructure problems and opportunities on all public roads;

``(ii) focus resources on areas of greatest need; and

``(iii) are coordinated with other State highway safety programs;

``(D) advance the capabilities of the State for traffic records data collection, analysis, and integration with other sources of safety data (such as road inventories) in a manner that--

``(i) complements the State highway safety program under chapter 4 and the commercial vehicle safety plan under section 31102 of title 49;

``(ii) includes all public roads;

``(iii) identifies hazardous locations, sections, and elements on public roads that constitute a danger to motorists (including motorcyclists), bicyclists, pedestrians, the disabled, and other highway users; and

``(iv) includes a means of identifying the relative severity of hazardous locations described in clause (iii) in terms of accidents, injuries, deaths, and traffic volume levels;

``(E)(i) determine priorities for the correction of hazardous road locations, sections, and elements (including railway-highway crossing improvements), as identified through crash data analysis;

``(ii) identify opportunities for preventing the development of such hazardous conditions; and

``(iii) establish and implement a schedule of highway safety improvement projects for hazard correction and hazard prevention; and

``(F)(i) establish an evaluation process to analyze and assess results achieved by highway safety improvement projects carried out in accordance with procedures and criteria established by this section; and

``(ii) use the information obtained under clause (i) in setting priorities for highway safety improvement projects.

``(d) Eligible Projects.--

``(1) In general.--A State may obligate funds apportioned to the State under section 104(b)(5) to carry out--

``(A) any highway safety improvement project on any public road or publicly owned bicycle or pedestrian pathway or trail; or

``(B) as provided in subsection (e), other safety projects.

``(2) Use of other funding for safety.--

``(A) Effect of section.--Nothing in this section prohibits the use of funds made available under other provisions of this title for highway safety improvement projects.

``(B) Use of other funds.--States are encouraged to address the full scope of their safety needs and opportunities by using funds made available under other provisions of this title (except a provision that specifically prohibits that use).

``(e) Flexible Funding for States With a Strategic Highway Safety Plan.--

``(1) <<NOTE: Certification.>> In general.--To further the implementation of a State strategic highway safety plan, a State may use up to 10 percent of the amount of funds apportioned to the State under section 104(b)(5) for a fiscal year to carry out safety projects under any other section as provided in the State strategic highway safety plan if the State certifies that--

``(A) the State has met needs in the State relating to railway-highway crossings; and

``(B) the State has met the State's infrastructure safety needs relating to highway safety improvement projects.

``(2) Other transportation and highway safety plans.-- Nothing in this subsection requires a State to revise any State process, plan, or program in effect on the date of enactment of this section.

``(f) High Risk Rural Roads.--

``(1) In general.--After making an apportionment under section 104(b)(5) for a fiscal year beginning after September 30, 2005, the Secretary shall ensure, from amounts made available to carry out this section for such fiscal year, that a total of \$90,000,000 of such apportionment is set aside by the States, proportionally according to the share of each State of the total amount so apportioned, for use only for construction and operational improvements on high risk rural roads.

``(2) Special rule.--A State may use funds apportioned to the State pursuant to this subsection for any project under this section if the State certifies to the Secretary that the State has met all of State needs for construction and operational improvements on high risk rural roads.

``(g) Reports.--

``(1) **In general.--A State shall submit to the Secretary a report that--**

``(A) describes progress being made to implement highway safety improvement projects under this section;

``(B) assesses the effectiveness of those improvements; and

``(C) describes the extent to which the improvements funded under this section contribute to the goals of--

``(i) reducing the number of fatalities on roadways;

``(ii) reducing the number of roadway-related injuries;

``(iii) reducing the occurrences of roadway-related crashes;

``(iv) mitigating the consequences of roadway-related crashes; and

``(v) reducing the occurrences of crashes at railway-highway crossings.

``(2) Contents; schedule.--The Secretary shall establish the content and schedule for a report under paragraph (1).

``(3) <<NOTE: Public information.>> Transparency.--The

Secretary shall make reports submitted under subsection (c)(1)(D) available to the public through--
 ``(A) the Web site of the Department; and
 ``(B) such other means as the Secretary determines to be appropriate.

[[Page 119 STAT. 1225]]

``(4) Discovery and admission into evidence of certain reports, surveys, and information.--Notwithstanding any other provision of law, reports, surveys, schedules, lists, or data compiled or collected for any purpose directly relating to paragraph (1) or subsection (c)(1)(D), or published by the Secretary in accordance with paragraph (3), 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 identified or addressed in such reports, surveys, schedules, lists, or other data.

``(h) Federal Share of Highway Safety Improvement Projects.--Except as provided in sections 120 and 130, the Federal share of the cost of a highway safety improvement project carried out with funds apportioned to a State under section 104(b)(5) shall be 90 percent.''

(2) Clerical amendment.--The analysis for chapter 1 of such title is amended by striking the item relating to section 148 and inserting the following:

``148. Highway safety improvement program.''

(3) Conforming amendments.--

(A) Transfers of apportionments.--Section 104(g) of such title is amended in the first sentence by striking ``sections 130, 144, and 152 of this title'' and inserting ``sections 130 and 144''.

(B) Uniform transferability.--Section 126(a) of such title is amended by inserting ``under'' after ``State's apportionment''.

(C) Other sections.--Sections 154, 164, and 409 of such title are amended by striking ``152'' each place it appears and inserting ``148''.

(b) Apportionment of Highway Safety Improvement Program Funds.--Section 104(b) of such title (as amended by section 1103 of this Act) is amended--

(1) in the matter preceding paragraph (1), by inserting after ``Improvement program,'' the following: ``the highway safety improvement program,''; and

(2) by adding at the end the following:

``(5) Highway safety improvement program.--

 ``(A) In general.--For the highway safety improvement program, in accordance with the following formula:

 ``(i) $33\frac{1}{3}$ percent of the apportionments in the ratio that--

 ``(I) the total lane miles of Federal-aid highways in each State;

bears to
 ``(II) the total lane miles of
 Federal-aid highways in all States.
 ``(ii) 33\1/3\ percent of the apportionments
in the ratio that--
 ``(I) the total vehicle miles
 traveled on lanes on Federal-aid
 highways in each State; bears to
 ``(II) the total vehicle miles
 traveled on lanes on Federal-aid
 highways in all States.
 ``(iii) 33\1/3\ percent of the apportionments
in the ratio that--

[[Page 119 STAT. 1226]]

 ``(I) the number of fatalities on
 the Federal-aid system in each State in
 the latest fiscal year for which data
 are available; bears to
 ``(II) the number of fatalities on
 the Federal-aid system in all States in
 the latest fiscal year for which data
 are available.

 ``(B) Minimum apportionment.--Notwithstanding
subparagraph (A), each State shall receive a minimum of
one-half of 1 percent of the funds apportioned under
this paragraph.''.

(d) Elimination of Hazards Relating to Railway-Highway Crossings.--
 (1) Funds for protective devices.--Section 130(e) of such
title is amended--

 (A) by striking ``At'' and inserting the following:

 ``(1) In general.--Before making an apportionment under
section 104(b)(5) for a fiscal year, the Secretary shall set
aside, from amounts made available to carry out the highway
safety improvement program under section 148 for such fiscal
year, at least \$220,000,000 for the elimination of hazards and
the installation of protective devices at railway-highway
crossings. At''; and

 (B) by adding at the end the following:

 ``(2) Special rule.--If a State demonstrates to the
satisfaction of the Secretary that the State has met all its
needs for installation of protective devices at railway-highway
crossings, the State may use funds made available by this
section for other purposes under this subsection.''.

 (2) Apportionment.--Section 130(f) of such title is amended
to read as follows:

 ``(f) Apportionment.--

 ``(1) Formula.--Fifty percent of the funds set aside to
carry out this section pursuant to subsection (e)(1) shall be
apportioned to the States in accordance with the formula set
forth in section 104(b)(3)(A), and 50 percent of such funds
shall be apportioned to the States in the ratio that total
public railway-highway crossings in each State bears to the
total of such crossings in all States.

``(2) Minimum apportionment.--Notwithstanding paragraph (1), each State shall receive a minimum of one-half of 1 percent of the funds apportioned under paragraph (1).

``(3) Federal share.--The Federal share payable on account of any project financed with funds set aside to carry out this section shall be 90 percent of the cost thereof.''.

(3) Biennial reports to congress.--Section 130(g) of such title is amended in the third sentence--

(A) by inserting ``and the Committee on Commerce, Science, and Transportation,' after ``Public Works''; and

(B) by striking ``not later than April 1 of each year'' and inserting `` , not later than April 1, 2006, and every 2 years thereafter,''.

(4) Expenditure of funds.--Section 130 of such title is amended by adding at the end the following:

``(k) Expenditure of Funds.--Not more than 2 percent of funds apportioned to a State to carry out this section may be used by the State for compilation and analysis of data in support of activities carried out under subsection (g).''.

[[Page 119 STAT. 1227]]

(e) <<NOTE: 23 USC 148 note.>> Transition.--

(1) <<NOTE: Deadline.>> Implementation.--Except as provided in paragraph (2), the Secretary shall approve obligations of funds apportioned under section 104(b)(5) of title 23, United States Code (as added by subsection (b)), to carry out section 148 of that title, only if, not later than October 1 of the second fiscal year beginning after the date of enactment of this Act, a State has developed and implemented a State strategic highway safety plan as required pursuant to section 148(c) of that title.

(2) Interim period.--

(A) In general.--Before October 1 of the second fiscal year after the date of enactment of this Act and until the date on which a State develops and implements a State strategic highway safety plan, the Secretary shall apportion funds to a State for the highway safety improvement program and the State may obligate funds apportioned to the State for the highway safety improvement program under section 148 for projects that were eligible for funding under sections 130 and 152 of that title, as in effect on the day before the date of enactment of this Act.

(B) No strategic highway safety plan.--If a State has not developed a strategic highway safety plan by October 1, 2007, the State shall receive for the highway safety improvement program for each subsequent fiscal year until the date of development of such plan an amount that equals the amount apportioned to the State for that program for fiscal year 2007.