

111TH CONGRESS
2D SESSION

S. 3015

To amend chapter 53 of title 49, United States Code, to establish a public transportation safety program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 22, 2010

Mr. DODD (for himself, Mr. MENENDEZ, Ms. MIKULSKI, and Mr. CARDIN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend chapter 53 of title 49, United States Code, to establish a public transportation safety program, 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 “Public Transportation
5 Safety Program Act of 2010”.

6 **SEC. 2. PUBLIC TRANSPORTATION SAFETY PROGRAM.**

7 (a) IN GENERAL.—Section 5329 of title 49, United
8 States Code, is amended to read as follows:

1 **“§ 5329. Public transportation safety program**

2 “(a) RAIL FIXED GUIDEWAY SAFETY.—

3 “(1) PROGRAM.—The Secretary shall, as soon
4 as practicable, establish and implement a public
5 transportation safety program to improve the safety
6 of, and reduce the number and severity of accidents
7 involving, the design, construction, and revenue serv-
8 ice operation of rail fixed guideway public transpor-
9 tation systems that receive financial assistance
10 under this chapter.

11 “(2) EXCLUSION.—This section shall not apply
12 to rail fixed guideway public transportation systems
13 subject to regulation by the Federal Railroad Ad-
14 ministration under subtitle V of this title and the
15 Rail Safety Improvement Act of 2008 (Public Law
16 110–432; 122 Stat. 4848).

17 “(3) NATIONAL TRANSPORTATION SAFETY
18 BOARD.—When promulgating public safety transpor-
19 tation regulations, the Secretary shall, to the extent
20 practicable, take into consideration relevant rec-
21 ommendations of the National Transportation Safe-
22 ty Board.

23 “(b) BUS SAFETY.—The Secretary may establish and
24 implement a public transportation safety program to im-
25 prove the safety of, and reduce the number and severity
26 of accidents involving, public transportation bus systems

1 that receive financial assistance under this chapter in ac-
2 cordance with the provisions of this section.

3 “(c) REGULATIONS AND ORDERS.—

4 “(1) IN GENERAL.—The Secretary shall pro-
5 mulgate regulations and issue orders for the safe op-
6 eration of rail fixed guideway public transportation
7 systems, after appropriate consideration of costs and
8 benefits. The Secretary shall ensure that the regula-
9 tions establish a Federal certification program for
10 employees and contractors who carry out a State
11 public transportation safety program in compliance
12 with this section and oversee the performance of em-
13 ployees or contractors responsible for performing
14 safety activities identified in such program.

15 “(2) CONSULTATION BY DHS SECRETARY.—Be-
16 fore prescribing a security regulation or issuing a se-
17 curity order that affects the safety of public trans-
18 portation design, construction or operations, the Sec-
19 retary of Homeland Security shall consult with the
20 Secretary.

21 “(3) WAIVERS.—The Secretary may waive com-
22 pliance with any part of a regulation promulgated or
23 order issued under this section if the waiver is in the
24 public interest, or a regulation or order issued under
25 this section. The Secretary shall not issue a waiver

1 and shall immediately revoke a waiver if the waiver
2 would not be consistent with the goals and objectives
3 of this section. The Secretary shall make public the
4 reasons for granting or revoking the waiver.

5 “(d) PREEMPTION.—

6 “(1) IN GENERAL.—A State may adopt or con-
7 tinue in force a law, regulation, or order related to
8 public transportation safety until the Secretary pro-
9 mulgates a regulation or issues an order covering
10 the subject matter of the State requirement. A State
11 may adopt or continue in force an additional or
12 more stringent law, regulation, or order related to
13 public transportation safety only if the law, regula-
14 tion, or order—

15 “(A) has a safety benefit;

16 “(B) is not incompatible with a law, regu-
17 lation, or order of the United States Govern-
18 ment; and

19 “(C) does not unreasonably burden inter-
20 state commerce.

21 “(2) DAMAGES.—Nothing in this section shall
22 be construed to preempt an action under State law
23 seeking damages for personal injury, death, or prop-
24 erty damage alleging that a party—

1 “(A) has failed to comply with the Federal
2 standard of care established by a regulation or
3 order issued by the Secretary under this sec-
4 tion;

5 “(B) has failed to comply with its own pro-
6 gram, rule, or standard that it created under a
7 regulation or order issued by the Secretary; or

8 “(C) has failed to comply with a State law,
9 regulation, or order that is not incompatible
10 with paragraph (1) of this subsection.

11 “(3) EFFECTIVE DATE.—This subsection shall
12 apply to all State law causes of action arising from
13 events or activities occurring on or after the enact-
14 ment of this section.

15 “(4) FEDERAL JURISDICTION.—Nothing in this
16 section creates a Federal cause of action on behalf
17 of an injured party or confers Federal question ju-
18 risdiction for State law causes of action.

19 “(e) SAFETY PROGRAM ACTIVITIES.—

20 “(1) IN GENERAL.—In carrying out this sec-
21 tion, the Secretary may take actions the Secretary
22 considers necessary, including—

23 “(A) conducting inspections, investigations,
24 audits, examinations, and testing of a public
25 transportation system’s equipment, facilities,

1 rolling stock, operations, and persons engaged
2 in the business of a public transportation sys-
3 tem;

4 “(B) delegating to a public entity or other
5 qualified person the conduct of inspections, in-
6 vestigations, audits, examinations, and testing
7 of a public transportation system’s equipment,
8 facilities, rolling stock, operations, and persons
9 engaged in the business of a public transpor-
10 tation system;

11 “(C) making reports, issuing subpoenas,
12 requiring the production of documents, taking
13 depositions, and prescribing recordkeeping and
14 reporting requirements; and

15 “(D) making grants or entering into agree-
16 ments—

17 “(i) for research, development, testing
18 and training of every area of public trans-
19 portation safety; and

20 “(ii) to assist a public entity or quali-
21 fied person in carrying out the delegated
22 activities set forth in subparagraph (B) of
23 this paragraph.

24 “(2) ACCIDENTS AND INCIDENTS.—Activities
25 authorized under this subsection may be engaged in

1 for safety purposes, including accident and incident
2 prevention and investigation.

3 “(3) COST SHARING.—The Federal share of a
4 grant awarded or an agreement entered into under
5 paragraph (1)(D) of this section may be up to 100
6 percent.

7 “(4) ENTRY.—In carrying out this subsection,
8 an officer or employee of the Secretary, or agent
9 designated by the Secretary under paragraph (1)(B)
10 of this subsection, at reasonable times and in a rea-
11 sonable way, may enter and inspect public transpor-
12 tation equipment, facilities, rolling stock, operations,
13 and relevant records. When requested, the officer,
14 employee, or the designated agent shall display prop-
15 er credentials. During an inspection, the officer, em-
16 ployee, or designated agent of the Secretary qualifies
17 as an employee of the United States Government
18 under chapter 171 of title 28.

19 “(f) STATE PARTICIPATION.—

20 “(1) SAFETY PROGRAM.—A State may establish
21 and implement a State public transportation safety
22 program through statute and regulation that re-
23 quires, at a minimum, compliance with the regula-
24 tions and policies issued by the Secretary under this

1 section and complies with subsection (d) of this sec-
2 tion.

3 “(2) GRANTS.—The Secretary may make
4 grants or enter into agreements under this sub-
5 section to carry out a State public transportation
6 safety program, including to train employees nec-
7 essary to administer and manage the program, and
8 to enforce Federal and State public transportation
9 safety laws, regulations and orders, provided that—

10 “(A) employees responsible for carrying
11 out the safety oversight functions of a State
12 public transportation safety program meet the
13 safety certification criteria established through
14 regulations issued under subsection (c)(1) of
15 this section;

16 “(B) a State submits its public transpor-
17 tation safety program, which shall provide a
18 right of entry and inspection to carry out the
19 program, to the Secretary for review and writ-
20 ten approval prior to implementing the pro-
21 gram; and

22 “(C) a State submits each amendment to
23 its public transportation safety program to the
24 Secretary for review and written decision at
25 least 60 days before the amendment becomes

1 effective. If a State does not receive a written
2 response from the Secretary by the end of the
3 60-day period, the amendment shall be deemed
4 to be approved.

5 “(3) MULTI-STATE REQUIREMENTS.—When a
6 single public transportation authority operates in
7 more than one State, the affected States, if estab-
8 lishing and implementing a public transportation
9 safety program as authorized under this subsection,
10 shall—

11 “(A) establish and implement the program
12 jointly to ensure uniform safety standards and
13 enforcement procedures that shall be, at a min-
14 imum, in compliance with this section and the
15 regulations and policies issued by the Secretary
16 under this section; or

17 “(B) designate an entity (other than the
18 public transportation authority) to carry out the
19 activities and requirements specified by sub-
20 paragraph (A) of this paragraph.

21 “(4) CONFLICT OF INTEREST.—A State may
22 not—

23 “(A) allocate grant funds awarded under
24 paragraph (1) of this subsection to a State
25 agency or local entity that operates a public

1 transportation system that receives Federal
2 transit assistance;

3 “(B) allow a State agency or local entity
4 that operates a public transportation system to
5 provide funds to a State agency or an entity
6 designated by the State that is responsible for
7 establishing, implementing, or maintaining a
8 State public transportation safety program; or

9 “(C) allow a State agency or local entity
10 that operates a public transportation system to
11 participate in the oversight of establishing, im-
12 plementing, or maintaining a State public
13 transportation safety program.

14 “(5) COST SHARING.—In the case of a State
15 that implements a safety program under this sec-
16 tion, the following applies:

17 “(A) The Secretary shall reimburse the
18 State from a grant made or agreement entered
19 into under this section, an amount that is up to
20 100 percent of the costs incurred by the State
21 in a fiscal year for developing, implementing
22 and enforcing a State public transportation
23 safety program.

24 “(B) The Secretary, through regulations
25 promulgated under this section, shall establish

1 a schedule of reimbursable costs that the Sec-
2 retary shall use to assist the State in defraying
3 the State's costs of developing, implementing
4 and enforcing a State public transportation
5 safety program.

6 “(C) To help defray the costs of devel-
7 oping, implementing and enforcing a State pub-
8 lic transportation safety program, the State
9 may submit to the Secretary a voucher that
10 does not exceed the amount identified on the
11 schedule of reimbursable costs for an eligible
12 activity.

13 “(D) The Secretary shall pay the State an
14 amount not more than the Federal Govern-
15 ment's share of costs incurred as of the date of
16 the voucher.

17 “(6) NOTICE OF WITHDRAWAL.—The Secretary
18 shall ensure that the State is carrying out the State
19 public transportation safety program, as follows:

20 “(A) If the Secretary finds, after notice
21 and opportunity to comment, that the State
22 transportation safety program previously ap-
23 proved is not being followed or has become in-
24 adequate to ensure enforcement of the regula-

1 tions or orders, the Secretary shall withdraw
2 approval of the program and notify the State.

3 “(B) A State public transportation safety
4 program shall no longer be in effect upon the
5 State’s receipt of the Secretary’s notice of with-
6 drawal of approval.

7 “(C) A State receiving notice under sub-
8 paragraph (A) of this paragraph may seek judi-
9 cial review of the Secretary’s decision under
10 chapter 7 of title 5, United States Code.

11 “(D) Notwithstanding the withdrawal, a
12 State may retain jurisdiction in administrative
13 and judicial proceedings begun before the with-
14 drawal if the issues involved are not related di-
15 rectly to the reasons for the withdrawal.

16 “(g) ENFORCEMENT.—

17 “(1) IN GENERAL.—The Secretary has the au-
18 thority—

19 “(A) to establish, impose and compromise
20 a civil penalty for a violation of a public trans-
21 portation safety regulation promulgated or
22 order issued under this section;

23 “(B) to establish, impose and compromise
24 a civil penalty for violation of the alcohol and

1 controlled substances testing provisions under
2 section 5331 of this chapter;

3 “(C) to request an injunction for a viola-
4 tion of a public transportation safety regulation
5 promulgated or order issued under this section;
6 and

7 “(D) to notify the Attorney General when
8 the Secretary receives evidence of a possible
9 criminal violation under paragraph (5).

10 “(2) DEPOSIT OF CIVIL PENALTIES.—An
11 amount collected by the Secretary under this section
12 shall be deposited into the General Fund of the
13 United States Treasury.

14 “(3) ENFORCEMENT BY THE ATTORNEY GEN-
15 ERAL.—At the request of the Secretary, the Attor-
16 ney General shall bring a civil action—

17 “(A) for appropriate injunctive relief to en-
18 sure compliance with this section;

19 “(B) to collect a civil penalty imposed or
20 an amount agreed upon in a compromise under
21 paragraph (1) of this subsection; or

22 “(C) to enforce a subpoena, request for ad-
23 missions, request for production of documents
24 or other tangible things, or request for testi-

1 mony by deposition issued by the Secretary
2 under this section.

3 “(4) JURISDICTION.—An action under para-
4 graph (3) of this subsection may be brought in a
5 district court of the United States in any State in
6 which the relief is required. On a proper showing,
7 the court shall issue a temporary restraining order
8 or preliminary or permanent injunction. An injunc-
9 tion under this section may order a public transpor-
10 tation agency receiving assistance under this chapter
11 to comply with this section, or a regulation promul-
12 gated under this section.

13 “(5) CRIMINAL PENALTY.—A person who know-
14 ingly violates this section or a public transportation
15 safety regulation or order issued under this section
16 shall be fined under title 18, United States Code,
17 imprisoned for not more than 5 years, or both; ex-
18 cept that the maximum amount of imprisonment
19 shall be 10 years in any case in which the violation
20 results in death or bodily injury to any person. For
21 purposes of this subparagraph—

22 “(A) a person acts knowingly when—

23 “(i) the person has actual knowledge
24 of the facts giving rise to the violation; or

1 “(ii) a reasonable person acting in the
2 circumstances and exercising reasonable
3 care would have that knowledge; and

4 “(B) actual knowledge of the existence of
5 a statutory provision, or a regulation or a re-
6 quirement required by the Secretary is not an
7 element of an offense under this paragraph.

8 “(h) EMERGENCY AUTHORITY.—

9 “(1) ORDERING RESTRICTIONS AND PROHIBI-
10 TIONS.—If, through testing, inspection, investiga-
11 tion, or research carried out under this section, the
12 Secretary decides that an unsafe condition or prac-
13 tice, or a combination of unsafe conditions and prac-
14 tices, causes an emergency situation involving a haz-
15 ard of death, personal injury, or significant harm to
16 the environment, the Secretary immediately may
17 order restrictions and prohibitions, without regard to
18 section 553 and section 554 of title 5, United States
19 Code, that may be necessary to abate the emergency
20 situation.

21 “(2) EMERGENCY CONDITION OR PRACTICE.—
22 The order shall describe the condition or practice, or
23 a combination of conditions and practices, that
24 causes the emergency situation and promulgate
25 standards and procedures for obtaining relief from

1 the order. This paragraph does not affect the Sec-
2 retary's discretion under this subsection to maintain
3 the order in effect for as long as the emergency situ-
4 ation exists.

5 “(3) REVIEW OF ORDERS.—After issuing an
6 order under this subsection, the Secretary shall pro-
7 vide an opportunity for review of the order under
8 section 554 of title 5, United States Code. If a peti-
9 tion for review is filed and the review is not com-
10 pleted by the end of the 30-day period beginning on
11 the date the order was issued, the order stops being
12 effective at the end of that period unless the Sec-
13 retary decides in writing that the emergency situa-
14 tion still exists.

15 “(4) CIVIL ACTIONS TO COMPEL ISSUANCE OF
16 ORDERS.—An employee of a rail fixed guideway pub-
17 lic transportation system provider who may be ex-
18 posed to imminent physical injury during that em-
19 ployment because of the Secretary's failure, without
20 any reasonable basis, to issue an order under para-
21 graph (1) of this subsection, or the employee's au-
22 thorized representative, may bring a civil action
23 against the Secretary in a district court of the
24 United States to compel the Secretary to issue an
25 order. The action shall be brought in the judicial

1 district in which the emergency situation is alleged
2 to exist, in which the employing provider has its
3 principal executive office, or in the District of Co-
4 lumbia. The Secretary’s failure to issue an order
5 under paragraph (1) of this subsection may be re-
6 viewed only under section 706 of title 5, United
7 States Code.

8 “(i) EFFECT ON EMPLOYEE QUALIFICATIONS AND
9 COLLECTIVE BARGAINING.—This section does not—

10 “(1) authorize the Secretary to promulgate reg-
11 ulations and issue orders related to qualifications of
12 employees, except qualifications specifically related
13 to safety; or

14 “(2) prohibit collective bargaining agreements
15 between public transportation agencies and public
16 transportation employees or their representatives, in-
17 cluding agreements related to qualifications of the
18 employees that are not inconsistent with regulations
19 and orders promulgated under this section.

20 “(j) PUBLIC TRANSPORTATION EMPLOYEE PROTEC-
21 TIONS.—Applicable provisions of the public transportation
22 employee protection provisions under section 1413 of the
23 Implementing Recommendations of the 9/11 Commission
24 Act of 2007 (6 U.S.C. 1142) apply to direct and indirect
25 recipients of Federal transit assistance under this chapter.

1 “(k) JUDICIAL REVIEW.—A person adversely affected
2 or aggrieved by a final action of the Secretary under this
3 section or under section 5331 of this title may petition
4 for review of the final action in the United States Court
5 of Appeals for the District of Columbia or in the court
6 of appeals for the United States for the circuit in which
7 the person resides and has its principal place of business.
8 Judicial procedures require—

9 “(1) the petition be filed not more than 60 days
10 after the Secretary’s action becomes final;

11 “(2) the clerk of the court immediately send a
12 copy of the petition filed under paragraph (3) of this
13 section to the Secretary;

14 “(3) the Secretary file with the court a record
15 of any proceeding in which the final action was
16 issued as provided in section 2112 of title 28,
17 United States Code; and

18 “(4) the court to consider an objection to a
19 final action of the Secretary only if the objection was
20 made in the course of the proceeding or review con-
21 ducted by the Secretary or if there was a reasonable
22 ground for not making the objection in the pro-
23 ceeding.”.

24 (b) AUTHORIZATIONS.—Section 5338 of title 49,
25 United States Code, is amended—

1 (1) by redesignating subsections (e), (f), and
2 (g) as subsections (f), (g), and (h), respectively;

3 (2) by inserting after subsection (d) the fol-
4 lowing:

5 “(e) SAFETY PROGRAM.—There are authorized to be
6 appropriated such amounts in each fiscal year as nec-
7 essary to administer section 5329 and to make grants or
8 enter into agreements to carry out section 5329.”; and

9 (3) in subsection (h), as redesignated, by strik-
10 ing “and (d)” and inserting “(d) and (e)”.

11 (c) PROHIBITIONS AGAINST REGULATING OPER-
12 ATIONS AND CHARGES.—Section 5334(b)(I) of title 49,
13 United States Code, is amended by inserting “or for pur-
14 poses of establishing and enforcing programs to improve
15 the safety of the nation’s public transportation systems,
16 and reducing accidents on rail fixed guideway and bus sys-
17 tems for public transportation,” after “emergency,”.

18 (d) ALCOHOL AND CONTROLLED SUBSTANCES TEST-
19 ING.—Section 5331(b)(2) of title 49, United States Code,
20 is amended—

21 (1) by redesignating subparagraphs (A) and
22 (B) as subparagraphs (B) and (C), respectively; and

23 (2) by inserting before subparagraph (B), as so
24 redesignated, the following:

1 “(A) shall establish and implement an enforce-
2 ment program, including the imposition of penalties
3 for failure to comply with this section;”.

4 (e) CONFORMING AMENDMENT; REPEAL.—

5 (1) CHAPTER ANALYSIS.—The analysis for
6 chapter 53 of title 49, United States Code, is
7 amended by striking the item relating to section
8 5329 and inserting the following:

“5329. Public Transportation Safety Program.”.

9 (2) REPEAL.—Section 5330 of title 49, United
10 States Code, is repealed 3 years after the effective
11 date of final regulations issued by the Secretary
12 under section 5329 of title 49, as amended by this
13 section.

○