112TH CONGRESS
1ST SESSION

S. _____

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.

IN THE SENATE OF THE UNITED STATES

_____ introduced the following bill; which was read twice and referred to the Committee on _____

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.

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 ''Clean Construction Act of 2011''.

SEC. 2. HIGHWAY CONSTRUCTION PROJECTS.

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

"§ 330. Construction equipment and vehicles

"(a) DEFINITIONS.—In this section:

"(1) CHANGE ORDER.—The term 'change order' means a written document that—

"(A) modifies any provision of a contract to carry out a covered highway construction project; and

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

"(2) COVERED EQUIPMENT.—

"(A) IN GENERAL.—The term 'covered construction equipment' means any off-road diesel equipment and any on-road diesel equipment that is operated on a covered highway construction project for not less than 80 hours over the life of the project.

"(B) EXCLUSIONS.—The term 'covered construction equipment' does not include—

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

gine power group issued by the Environmental Protection Agency relating to particulate matter exhaust for new diesel engines that are in effect on the date on which the highway construction project commences;

''(ii) equipment with diesel exhaust control technology that was installed during the 6-year period ending on the date of award of the contract for the covered highway construction project;

''(iii) large cranes, such as Sky cranes or Link Belt crashes, that are responsible for critical lift operations, if the emission control technology would adversely affect lift capacity; and

''(iv) additional or replacement equipment brought on the job site after work has commenced to prevent or remedy harm to human beings or to address an emergency.

''(3) COVERED HIGHWAY CONSTRUCTION PROJECT.—

''(A) IN GENERAL.—The term 'covered highway construction project' means a Federal-

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

''(B) INCLUSIONS.—The term 'covered highway construction project' includes—

''(i) projects funded, in whole or in part, by amounts from the Highway Trust Fund; and

''(ii) projects funded, in whole or in part, by amounts from the general fund of the Treasury.

''(4) DIESEL EMISSION CONTROL TECHNOLOGY.—

''(A) IN GENERAL.—Subject to subparagraph (B), the term 'diesel emission control technology' means a technology that—

''(i) is—

''(I) a diesel exhaust control technology;

''(II) a diesel engine upgrade;

''(III) a diesel engine repower; or

''(IV) an idle reduction control technology; and

''(ii) reduces $PM_{2.5}$ emissions from covered equipment by—

''(I) not less than 85 percent control of any emission of particulate matter; or

''(II) the maximum achievable reduction of any emission of particulate matter.

''(B) CRITERIA.—

''(i) IN GENERAL.—To be considered a 'diesel emission control technology', the technology described in subparagraph (A)(i) shall meet the criteria described in clauses (ii) through (v), as applicable.

''(ii) DIESEL EXHAUST CONTROL TECHNOLOGY.—For a diesel exhaust control technology, the technology shall be—

''(I) installed on a diesel engine or vehicle;

''(II) included on a list of verified retrofit technologies maintained by the Environmental Protection Agency or the California Air Resources Board; and

''(III) certified by the installer as having been installed in accordance with the specifications included on the

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

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

''(I) rebuilt using new components that collectively appear as a system, such as a kit, on a list of verified retrofit technologies maintained by the Environmental Protection Agency or the California Air Resources Board; and

''(II) certified by the installer to have been installed in accordance with the specifications included on the list referred to in subclause (I) for achieving a reduction in 1 or more air quality criteria for air pollutants under section 109 of the Clean Air Act (42 U.S.C. 7409).

''(iv) DIESEL ENGINE REPOWER.—For a diesel engine repower, the repower

shall be conducted on a new or remanufactured diesel engine that is—

"(I) installed as a replacement for an engine used in the existing equipment, subject to the condition that the replaced engine is—

"(aa) used for scrap;

"(bb) permanently disabled; or

"(cc) returned to the original manufacturer for remanufacture to a PM level that is at least equivalent to a Tier 2 emission standard; and

"(II) certified by the engine manufacturer as meeting the emission standards for new vehicles for the applicable engine power group established by the Environmental Protection Agency as in effect on the date on which the engine is remanufactured.

"(v) IDLE REDUCTION CONTROL TECHNOLOGY.—For an idle reduction control technology, the technology shall be—

''(I) installed on a diesel engine or vehicle;

''(II) included on a list of verified retrofit technologies maintained by the Environmental Protection Agency or the California Air Resources Board; and

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

''(5) ELIGIBLE ENTITY.—The term 'eligible entity' means an entity that has entered into a prime contract or agreement with a State to carry out a covered highway construction project.

''(6) OFF-ROAD DIESEL EQUIPMENT.—

''(A) IN GENERAL.—The term 'off-road diesel equipment' means a vehicle, including covered equipment, that is—

''(i) powered by a nonroad diesel engine of not less than 50 horsepower; and

"(ii) not intended for highway use.

"(B) INCLUSIONS.—The term 'off-road diesel equipment' includes a backhoe, bulldozer, compressor, crane, excavator, generator, and similar equipment.

"(C) EXCLUSIONS.—The term 'off-road diesel equipment' does not include a locomotive or marine vessel.

"(7) ON-ROAD DIESEL EQUIPMENT.—The term 'on-road diesel equipment' means any self-propelled vehicle that—

"(A) operates on diesel fuel;

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

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

"(8) $PM_{2.5}$ NONATTAINMENT OR MAINTENANCE AREA.—The term '$PM_{2.5}$ nonattainment or maintenance area' means a nonattainment or maintenance area designated under section 107(d)(6) of the Clean Air Act (42 U.S.C. 7407(d)(6)).

"(b) HIGHWAY CONSTRUCTION PROJECTS FOR $PM_{2.5}$ NONATTAINMENT AND MAINTENANCE AREAS.—Subject to subsection (c)(2), all covered equipment used on a covered highway construction project within a $PM_{2.5}$ non-

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

''(c) FUNDING FOR COSTS OF ACQUIRING AND INSTALLING EMISSION CONTROL TECHNOLOGY.—

''(1) IN GENERAL.—The Secretary shall approve as part of the Federal share of the cost of a covered highway construction project an amount equal to the amount required to be expended under paragraph (2) for the purpose of acquiring and installing diesel emission control technology.

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

''(A) 1 percent of the cost of the project; or

''(B) the amount necessary to install diesel emission control technology on all covered equipment used on the project.

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

''(d) IMPLEMENTATION.—

''(1) PLAN FOR ELIGIBLE ENTITIES.—As soon as practicable after the date on which a State awards a construction contract for a covered highway construction project to an eligible entity, the eligible entity shall submit to the State a written plan that includes—

''(A) an estimate of the quantity of equipment that the eligible entity intends to operate onsite;

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

''(i) the vehicle serial number, identifier, type, manufacturer, model, and model year; and

''(ii) the engine serial number, manufacturer, model, engine family, model year, horsepower, and displacement;

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

''(D) the options for modifying any covered equipment to employ diesel emission control technology, including—

"(i) an itemized estimate of the reasonable expected cost of modifying each piece of covered equipment to reduce the emissions of that equipment;

"(ii) a reasonable estimate of the emission reduction that would directly result from each modification;

"(iii) a reasonable estimate of the time required to perform each modification; and

"(iv) a reasonable estimate of the impact that each modification would have on the schedule of the covered highway construction project; and

"(E) at the discretion of the eligible entity, the options for modifying equipment that is not covered equipment to employ diesel emission control technology, including the estimates required under clauses (i), (ii), (iii), and (iv) of subparagraph (D).

"(2) SUPPLEMENTAL PLAN FOR SUBCONTRACTORS.—If the total estimated cost of the modifications described in paragraph (1)(D) that is submitted by an eligible entity to a State in accordance with paragraph (1) is less than the amount required

to be expended by the eligible entity under subsection (c)(2)(A), the eligible entity shall submit to the State a supplemental written plan that includes, with respect to the equipment that a subcontractor of the eligible entity intends to operate onsite, the information required to be submitted under paragraph (1).

''(3) BIDDER REQUIREMENTS.—By change order and in accordance with the requirements and procedures of this subsection, a State shall require the successful bidder of a covered highway construction project to install and use diesel emission control technology on the pieces of covered equipment selected by the State as having the greatest potential of meeting the requirements of subsection (b).

''(4) STRUCTURE OF CHANGE ORDER.—A State may structure a change order as the State determines to be necessary, if the State determines that the change order does not—

''(A) materially delay the commencement of construction of the covered highway construction project;

''(B) materially increase the time required to carry out the covered highway construction project;

"(C) cause any material interruption of the covered highway construction project;

"(D) increase any risk to the safety or health of any construction worker of the covered highway construction project; or

"(E) result in the successful bidder for the covered highway construction project recovering less than 100 percent of the cost of implementing each diesel emission control technology.

"(e) SAVINGS CLAUSE.—Nothing in this section modifies or otherwise affects any authority or restrictions established under the Clean Air At (42 U.S.C. 7401 et seq.).".

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

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

"Sec. 330. Construction equipment and vehicles.".

SEC. 3. PUBLIC TRANSPORTATION CONSTRUCTION PROJECTS.

(a) IN GENERAL.—Chapter 53 of title 49, United States Code, is amended by adding at the end the following:

"§ 5341. Construction equipment and vehicles

''(a) DEFINITIONS.—In this section:

''(1) CHANGE ORDER.—The term 'change order' means a written document that—

''(A) modifies any provision of a contract to carry out a covered public transportation construction project; and

''(B) is issued by a recipient that is a party to that contract to implement a diesel emission control technology.

''(2) COVERED EQUIPMENT.—

''(A) IN GENERAL.—The term 'covered construction equipment' means any off-road diesel equipment and any on-road diesel equipment that is operated on a covered public transportation construction project for not less than 80 hours over the life of the project.

''(B) EXCLUSIONS.—The term 'covered construction equipment' does not include—

''(i) equipment with an engine that meets or exceeds any particulate matter

emission standards for the applicable engine power group issued by the Environmental Protection Agency relating to particulate matter exhaust for new diesel engines that are in effect on the date on which the public transportation construction project commences;

''(ii) equipment with a diesel exhaust control technology that was installed during the 6-year period ending on the date of award of the contract for the covered public transportation construction project;

''(iii) large cranes, such as Sky cranes or Link Belt crashes, that are responsible for critical lift operations, if the emission control technology would adversely affect lift capacity; and

''(iv) additional or replacement equipment brought on the job site after work has commenced to prevent or remedy harm to human beings or to address an emergency.

''(3) COVERED PUBLIC TRANSPORTATION CONSTRUCTION PROJECT.—

"(A) IN GENERAL.—The term 'covered public transportation construction project' means a project that receives Federal funding for the construction of a public transportation facility.

"(B) INCLUSIONS.—The term 'covered public transportation construction project' includes—

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

"(ii) projects funded, in whole or in part, by amounts from the general fund of the Treasury.

"(4) DIESEL EMISSION CONTROL TECHNOLOGY.—

"(A) IN GENERAL.—Subject to subparagraph (B), the term 'diesel emission control technology' means a technology that—

"(i) is—

"(I) a diesel exhaust control technology;

"(II) a diesel engine upgrade;

"(III) a diesel engine repower; or

''(IV) an idle reduction control technology; and

''(ii) reduces $PM_{2.5}$ emissions from covered equipment by—

''(I) not less than 85 percent control of any emission of particulate matter; or

''(II) the maximum achievable reduction of any emission of particulate matter.

''(B) CRITERIA.—

''(i) IN GENERAL.—To be considered a 'diesel emission control technology', the technology described in subparagraph (A)(i) shall meet the criteria described in clauses (ii) through (v), as applicable.

''(ii) DIESEL EXHAUST CONTROL TECHNOLOGY.—For a diesel exhaust control technology, the technology shall be—

''(I) installed on a diesel engine or vehicle;

''(II) included on a list of verified retrofit technologies maintained by the Environmental Protection Agency

or the California Air Resources Board; and

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

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

''(I) rebuilt using new components that collectively appear as a system, such as a kit, on a list of verified retrofit technologies maintained by the Environmental Protection Agency or the California Air Resources Board; and

''(II) certified by the installer to have been installed in accordance with the specifications included on the list referred to in subclause (I) for achieving a reduction in 1 or more air qual-

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

"(iv) DIESEL ENGINE REPOWER.—For a diesel engine repower, the repower shall be conducted on a new or remanufactured diesel engine that is—

"(I) installed as a replacement for an engine used in the existing equipment, subject to the condition that the replaced engine is—

"(aa) used for scrap;

"(bb) permanently disabled; or

"(cc) returned to the original manufacturer for remanufacture to a PM level that is at least equivalent to a Tier 2 emission standard; and

"(II) certified by the engine manufacturer as meeting the emission standards for new vehicles for the applicable engine power group established by the Environmental Protection Agency as in effect on the date

on which the engine is remanufactured.

''(v) IDLE REDUCTION CONTROL TECHNOLOGY.—For an idle reduction control technology, the technology shall be—

''(I) installed on a diesel engine or vehicle;

''(II) included on a list of verified retrofit technologies maintained by the Environmental Protection Agency or the California Air Resources Board; and

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

''(5) ELIGIBLE ENTITY.—The term 'eligible entity' means an entity that has entered into a prime contract or agreement with a recipient to carry out a covered public transportation construction project.

''(6) OFF-ROAD DIESEL EQUIPMENT.—

"(A) IN GENERAL.—The term 'off-road diesel equipment' means a vehicle, including covered equipment, that is—

"(i) powered by a nonroad diesel engine of not less than 50 horsepower; and

"(ii) not intended for highway use.

"(B) INCLUSIONS.—The term 'off-road diesel equipment' includes a backhoe, bulldozer, compressor, crane, excavator, generator, and similar equipment.

"(C) EXCLUSIONS.—The term 'off-road diesel equipment' does not include a locomotive or marine vessel.

"(7) ON-ROAD DIESEL EQUIPMENT.—The term 'on-road diesel equipment' means any self-propelled vehicle that—

"(A) operates on diesel fuel;

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

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

"(8) $PM_{2.5}$ NONATTAINMENT OR MAINTENANCE AREA.—The term '$PM_{2.5}$ nonattainment or maintenance area' means a nonattainment or maintenance

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

''(9) RECIPIENT.—The term 'recipient' means an entity that receives Federal funding to carry out a covered public transportation construction project.

''(b) PUBLIC TRANSPORTATION CONSTRUCTION PROJECTS FOR $PM_{2.5}$ NONATTAINMENT AND MAINTENANCE AREAS.—Subject to subsection (c)(2), all covered equipment used on a covered public transportation construction project within a $PM_{2.5}$ nonattainment or maintenance area shall have installed and employ diesel emission control technology.

''(c) FUNDING FOR COSTS OF ACQUIRING AND INSTALLING EMISSION CONTROL TECHNOLOGY.—

''(1) IN GENERAL.—The Secretary shall approve as part of the Federal share of the cost of a covered public transportation construction project an amount equal to the amount required to be expended under paragraph (2) for the purpose of acquiring and installing diesel emission control technology.

''(2) REQUIRED EXPENDITURE.—A recipient shall be in compliance with subsection (b) with respect to a covered public transportation construction project if, in order to comply with subsection (b), the

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

"(A) 1 percent of the cost of the project; or

"(B) the amount necessary to install emission control technology on all covered equipment used on the project.

"(3) USE OF AMOUNTS.—A recipient may use amounts provided to the recipient under section 149 of title 23, United States Code, to meet the requirements of subsection (b).

"(d) IMPLEMENTATION.—

"(1) PLAN FOR ELIGIBLE ENTITIES.—As soon as practicable after the date on which a recipient awards a construction contract for a covered public transportation construction project to an eligible entity, the eligible entity shall submit to the recipient a written plan that includes—

"(A) an estimate of the quantity of equipment that the eligible entity intends to operate onsite;

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

"(i) the vehicle serial number, identifier, type, manufacturer, model, and model year; and

"(ii) the engine serial number, manufacturer, model, engine family, model year, horsepower, and displacement;

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

"(D) the options for modifying any covered equipment to employ diesel emission control technology, including—

"(i) an itemized estimate of the reasonable expected cost of modifying each piece of covered equipment to reduce the emissions of that equipment;

"(ii) a reasonable estimate of the emission reduction that would directly result from each modification;

"(iii) a reasonable estimate of the time required to perform each modification; and

"(iv) a reasonable estimate of the impact that each modification would have on

the schedule of the covered public transportation construction project; and

''(E) at the discretion of the eligible entity, the options for modifying equipment that is not covered equipment to employ diesel emission control technology, including the estimates required under clauses (i), (ii), (iii), and (iv) of subparagraph (D).

''(2) SUPPLEMENTAL PLAN FOR SUBCONTRACTORS.—If the total estimated cost of the modifications described in paragraph (1)(D) that is submitted by an eligible entity to a recipient in accordance with paragraph (1) is less than the amount required to be expended by the eligible entity under subsection (c)(2)(A), the eligible entity shall submit to the recipient a supplemental written plan that includes, with respect to the equipment that a subcontractor of the eligible entity intends to operate onsite, the information required to be submitted under paragraph (1).

''(3) BIDDER REQUIREMENTS.—By change order and in accordance with the requirements and procedures of this subsection, a recipient shall require the successful bidder of a covered public transportation construction project to install and employ

diesel emission control technology on the pieces of covered equipment selected by the recipient as having the greatest potential of meeting the requirements of subsection (b).

''(4) STRUCTURE OF CHANGE ORDER.—A recipient may structure a change order as the recipient determines to be necessary, if the recipient determines that the change order does not—

''(A) materially delay the commencement of construction of the covered public transportation construction project;

''(B) materially increase the time required to carry out the covered public transportation construction project;

''(C) cause any material interruption of the covered public transportation construction project;

''(D) increase any risk to the safety or health of any construction worker of the covered public transportation construction project; or

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

cost of implementing each diesel emission control technology.

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

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

(c) CLERICAL AMENDMENT.—The analysis for chapter 53 of title 49, United States Code, is amended by adding at the end the following:

''5341. Construction equipment and vehicles.''.

SEC. 4. REPORT TO CONGRESS.

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

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

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