

# [DISCUSSION DRAFT]

115TH CONGRESS  
1ST SESSION

S. \_\_\_\_\_

To enhance tribal road safety, and for other purposes.

IN THE SENATE OF THE UNITED STATES

\_\_\_\_\_, 2017

Mr. \_\_\_\_\_ introduced the following bill; which was read twice  
and referred to the Committee on \_\_\_\_\_

## A BILL

To enhance tribal road safety, and for other purposes.

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

### 3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE. —This Act may be cited as the “John P. Smith  
5 Tribal Road Safety and Infrastructure Investment Act of 2017”.

6 (b) TABLE OF CONTENTS. —The table of contents of this Act is as  
7 follows:

8 Sec. 1. Short title; table of contents.

### 9 **TITLE I - JOHN P. SMITH TRIBAL ROAD SAFETY PROGRAM**

#### 10 **SUBTITLE A**

11 Sec. 101. Short title.

12 Sec. 102. Definition of Secretary.

1 Sec. 103. Application of Categorical Exclusions to certain Tribal  
2 transportation facilities.

3 Sec. 104. Programmatic agreements for categorical exclusions.

4 **SUBTITLE B**

5 Sec. 110. Other Tribal road safety improvements.

6 **TITLE II – STREAMLINING TRIBAL TRANSPORTATION SYSTEMS**

7 Sec. 201. Improving right-of-way record keeping on Indian lands.

8 Sec. 202. Facilitating the transfer of funds for Tribal projects.

9 **TITLE III – INNOVATING TRIBAL TRANSPORTATION**

10 **INFRASTRUCTURE INITIATIVES**

11 Sec. 301. Tribal infrastructure bank.

12 Sec. 302. National Tribal asset management program.

13 **TITLE IV –TRIBAL TRANSPORTATION INFRASTRUCTURE**

14 **INVESTMENTS**

15 Sec. 401. Tribal Transportation Program infrastructure investments.

16 Sec. 402. Tribal Transit Program infrastructure investments.

17 Sec. 403. Nationally Significant Federal lands and Tribal Projects Program.

18 Sec. 404. Tribal high priority projects program.

19 **TITLE I - JOHN P. SMITH ROAD SAFETY PROGRAM**

20 **SUBTITLE A**

21 **SEC. 101. SHORT TITLE.**

22 This subtitle may be cited as the “John P. Smith Road Safety Program.”

23 **SEC. 102. DEFINITION OF SECRETARY.**

24 In this ~~Aet~~[subtitle](#), the term “Secretary” means the Secretary of the  
25 Interior.

26 **SEC.103. APPLICATION OF CATEGORICAL EXCLUSIONS TO**

27 **CERTAIN TRIBAL TRANSPORTATION FACILITIES.**

28 (a) DEFINITION OF TRIBAL TRANSPORTATION SAFETY PROJECT.—

1 (1) IN GENERAL.—In this section, the term “tribal transportation safety  
2 project” means a project described in paragraph (2) that is eligible for funding  
3 under section 202 of title 23, United States Code, and that—

4 (A) corrects or improves a hazardous road location or feature; or

5 (B) addresses a highway safety problem.

6 (2) PROJECTS DESCRIBED.—A project described in this paragraph is a  
7 project for one or more of the following:

8 (A) An intersection safety improvement.

9 (B) Pavement and shoulder widening (including the addition of a  
10 passing lane to remedy an unsafe condition).

11 (C) Installation of rumble strips or another warning device, if the  
12 rumble strips or other warning devices do not adversely affect the safety or  
13 mobility of bicyclists and pedestrians, including persons with disabilities.

14 (D) Installation of a skid-resistant surface at an intersection or other  
15 location with a high frequency of crashes.

16 (E) An improvement for pedestrian or bicyclist safety or the safety of  
17 persons with disabilities.

18 (F) Construction and improvement of a railway-highway grade  
19 crossing safety feature, including the installation of protective devices.

20 (G) The conduct of a model traffic enforcement activity at a railway-  
21 highway crossing.

22 (H) Construction of a traffic calming feature.

23 (I) Elimination of a roadside hazard.

24 (J) Installation, replacement, and other improvements of highway  
25 signage and pavement markings or a project to maintain minimum levels  
26 of retroreflectivity that addresses a highway safety problem consistent with  
27 a State strategic highway safety plan.

28 (K) Installation of a priority control system for emergency vehicles at  
29 signalized intersections.

30 (L) Installation of a traffic control or other warning device at a location  
31 with high crash potential.

1 (M) Transportation safety planning.

2 (N) Collection, analysis, and improvement of safety data.

3 (O) Planning integrated interoperable emergency communications  
4 equipment, operational activities, or traffic enforcement activities  
5 (including police assistance) relating to work zone safety.

6 (P) Installation of guardrails, barriers (including barriers between  
7 construction work zones and traffic lanes for the safety of road users and  
8 workers), and crash attenuators.

9 (Q) The addition or retrofitting of structures or other measures to  
10 eliminate or reduce crashes involving vehicles and wildlife.

11 (R) Installation of yellow-green signs and signals at pedestrian and  
12 bicycle crossings and in school zones.

13 (S) Construction and operational improvements on a high risk rural  
14 road (as defined in section 148(a) of title 23, United States Code).

15 (T) Geometric improvements to a road for the purposes of safety  
16 improvement.

17 (U) A road safety audit.

18 (V) Roadway safety infrastructure improvements consistent with the  
19 recommendations included in the publication of the Federal Highway  
20 Administration entitled “Handbook for Designing Roadways for the Aging  
21 Population” (FHWA–SA–14–015), dated June 2014 (or a revised or  
22 updated publication).

23 (W) Truck parking facilities eligible for funding under section 1401 of  
24 MAP–21 (23 U.S.C. 137 note; Public Law 112–141).

25 (X) Systemic safety improvements.

26 (Y) Installation of vehicle-to-infrastructure communication equipment.

27 (Z) Pedestrian hybrid beacons.

28 (AA) Roadway improvements that provide separation between  
29 pedestrians and motor vehicles, including medians and pedestrian crossing  
30 islands.

(BB) A physical infrastructure safety project not described in subparagraphs (A) through (AA).

(b) NEW CATEGORICAL EXCLUSIONS.—

(1) REVIEW OF EXISTING CATEGORICAL EXCLUSIONS.—The Secretary shall review the categorical exclusions under section 771.117 of title 23, Code of Federal Regulations (or successor regulations), to determine which, if any, are applicable for use by the Secretary in review of projects eligible for assistance under section 202 of title 23, United States Code.

(2) REVIEW OF TRIBAL TRANSPORTATION SAFETY PROJECTS.—The Secretary shall identify tribal transportation safety projects that meet the requirements for categorical exclusions under sections 1507.3 and 1508.4 of title 40, Code of Federal Regulations.

(3) PROPOSAL.—The Secretary shall issue a proposed rule, in accordance with sections 1507.3 and 1508.4 of title 40, Code of Federal Regulations, to propose any categorical exclusions identified under paragraphs (1) and (2).

(4) DEADLINE.—Not later than 180 days after the date of enactment of this Act, and after considering any comments on the proposed rule issued under paragraph (3), the Secretary shall promulgate a final rule for the categorical exclusions, in accordance with sections 1507.3 and 1508.4 of title 40, Code of Federal Regulations.

(5) Technical assistance.—The Secretary of Transportation shall provide technical assistance to the Secretary in carrying out this subsection.

(c) REVIEWS OF TRIBAL TRANSPORTATION SAFETY PROJECTS.—

(1) IN GENERAL.—The Secretary or the head of another Federal agency responsible for a decision related to a tribal transportation safety project shall complete any approval or decision for the review of the tribal transportation safety project required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) or any other applicable Federal law on an expeditious basis using the shortest existing applicable process.

(2) REVIEW OF APPLICATIONS.—Not later than 45 days after the date of receipt of a complete application by an Indian tribe for approval of a tribal

1 transportation safety project, the Secretary or the Secretary of Transportation,  
2 as appropriate, shall—

3 (A) take final action on the application; or

4 (B) provide the Indian tribe a schedule for completion of the review  
5 described in paragraph (1), including the identification of any other Federal  
6 agency that has jurisdiction with respect to the project.

7 (3) DECISIONS UNDER OTHER FEDERAL LAWS.—In any case in  
8 which a decision under any other Federal law relating to a tribal transportation  
9 safety project (including the issuance or denial of a permit or license) is  
10 required, not later than 45 days after the Secretary has made all decisions of  
11 the lead agency under the National Environmental Policy Act of 1969 (42  
12 U.S.C. 4321 et seq.) with respect to the project, the head of the Federal agency  
13 responsible for the decision shall—

14 (A) make the applicable decision; or

15 (B) provide the Indian tribe a schedule for making the decision.

16 (4) EXTENSIONS.—The Secretary or the head of an applicable Federal  
17 agency may extend the period under paragraph (2) or (3), as applicable, by an  
18 additional 30 days by providing the Indian tribe notice of the extension,  
19 including a statement of the need for the extension.

20 (5) NOTIFICATION AND EXPLANATION.—In any case in which a  
21 required action is not completed by the deadline under paragraph (2), (3), or  
22 (4), as applicable, the Secretary or the head of a Federal agency, as applicable,  
23 shall—

24 (A) notify the Committee on Indian Affairs of the Senate and the  
25 Committee on Natural Resources of the House of Representatives of the  
26 failure to comply with the deadline; and

27 (B) provide to the Committees described in subparagraph (A) a detailed  
28 explanation of the reasons for the failure to comply with the deadline.

1   **SEC. 104. PROGRAMMATIC AGREEMENTS FOR CATEGORICAL**  
2                   **EXCLUSIONS.**

3           (a) IN GENERAL.—At the request of an Indian tribe, the Secretary or the  
4   Secretary of Transportation shall enter into programmatic agreements with Indian  
5   tribes that establish efficient administrative procedures for carrying out  
6   environmental reviews for projects eligible for assistance under section 202 of title  
7   23, United States Code. Programmatic agreements include contracts and  
8   agreements pursuant to the Indian Self-Determination and Education Assistance  
9   Act, Pub. L. 93-638, as amended, section 207 of title 23, and sections 202(a)(2)(B)  
10   and 202(b)(6) and (7) of title 23, United States Code.

11          (b) INCLUSIONS.—A programmatic agreement under subsection (a)—

12           (1) may include an agreement that allows an Indian tribe to determine, on  
13   behalf of the Secretary or the Secretary of Transportation, whether a project is  
14   categorically excluded from the preparation of an environmental assessment  
15   or environmental impact statement under the National Environmental Policy  
16   Act of 1969 (42 U.S.C. 4321 et seq.); and

17           (2) shall—

18           (A) require that the Indian tribe maintain adequate capacity in terms  
19   of personnel and other resources to carry out applicable agency  
20   responsibilities pursuant to section 1507.2 of title 40, Code of Federal  
21   Regulations (or successor regulations);

22           (B) set forth the responsibilities of the Indian tribe for making  
23   categorical exclusion determinations, documenting the determinations, and  
24   achieving acceptable quality control and quality assurance;

25           (C) allow—

26           (i) the Secretary or Secretary of Transportation, as  
27   appropriate, to monitor compliance of the Indian tribe with the  
28   terms of the agreement; and

29           (ii) the Indian tribe to execute any needed corrective action;

30           (D) contain stipulations for amendments, termination, and public  
31   availability of the agreement once the agreement has been executed; and

(E) have a term of not more than 5 years, with an option for renewal based on a review by the Secretary or the Secretary of Transportation of the performance of the Indian tribe.

(c) SOVEREIGN IMMUNITY.—The Secretary and the Secretary of Transportation shall not require an Indian tribe to waive its sovereign immunity as a condition of entering into a programmatic agreement and nothing in this section shall be construed as a waiver of an Indian tribe’s sovereign immunity.

## SUBTITLE B

### SEC. 110. OTHER TRIBAL ROAD SAFETY IMPROVEMENTS.

(a) Section 104(b)(3) of title 23, United States Code, is amended by striking the period at the end of the sentence, and adding: “, provided, however, that of the amount apportioned to the States for the highway safety improvement program, the Secretary shall reserve 2 percent of such funds to augment the competitive highway safety program for Indian tribes under section 202(e) of this title to reduce traffic fatalities and injuries on tribal transportation facilities; provided that the funds reserved shall be treated as if apportioned under section 202(e), and shall be in addition to amounts apportioned under that section and expended in accordance with the requirements of section 202(e).”

(b) Section 402(c)(2) of title 23, United States Code, is amended to strike “2 percent” and insert “3 ½ percent”.

(c) Section 133(h)(1)(B)(ii) of title 23, United States Code, is amended by striking the period, inserting “; and” in its place, and adding a new subparagraph (C) to read:

“(C) 3 percent of the funds reserved in section (h)(1)(A) of this provision shall be set-aside by the Secretary of Transportation for competitive grants to Indian tribes, for eligible projects as defined in this section; provided further, that notwithstanding any other provision of law, the Federal share payable on account of any project carried out with funds made available under this section shall be as provided in section 120(f).”

**TITLE II – STREAMLINING TRIBAL TRANSPORTATION SYSTEMS**

**SEC. 201. IMPROVING RIGHT-OF-WAY RECORD KEEPING ON  
INDIAN LANDS.**

**(a) RIGHTS-OF-WAY.—**

(1) **PROVISION OF DOCUMENTATION.**—Not later than 120 days after the date of receipt of a request from a tribal government of an Indian tribe, the Secretary of the Interior (hereafter referred to as the “Secretary”) shall provide to the tribal government documentation of valid right-of-way for all existing facilities on Indian Lands, which require right-of-way under specified Federal laws.

(2) **FAILURE TO PROVIDE DOCUMENTATION.**—

If, after receiving a request from a tribal government under paragraph (1), the Secretary is unable to provide documentation of valid right-of-way for all existing facilities on Indian Lands, as such terms are defined in specified Federal laws—

(A) not later than 30 days after the date of receipt of the request, the Secretary shall notify the tribal government of the Secretary’s inability to provide the documentation;

(B) at the request of the tribal government, the Secretary, not later than 120 days after such a request and in consultation with the tribal government and based on tribal consent, shall develop a schedule and a plan for acquiring, by purchase or otherwise, a valid right-of-way for existing routes that are eligible for inclusion in the national inventory of tribal transportation facilities under section 202(b) of title 23, United States Code, and owned by the Bureau of Indian Affairs or the tribal government; and

(C) not later than 1 year after such date of receipt, the Secretary shall acquire, by purchase or otherwise, a valid right-of-way in accordance with the schedule and plan developed under subparagraph (B).

1 (3) TRIBAL AUTHORITY TO ACQUIRE RIGHT-OF-WAY.—

2 (A) IN GENERAL.—If a tribal government has requested  
3 documentation under paragraph (1) of a valid right-of-way for a tribal  
4 transportation facility described under paragraph (2)(B) and has received  
5 notice under paragraph (2)(A) of the Secretary's inability to provide the  
6 documentation or the Secretary has failed to meet any of the deadlines  
7 under paragraph (2)(B), or (C) the tribal government may assume, at the  
8 option of the tribal government and upon written notice to the Secretary,  
9 the responsibility of the Secretary under subparagraph (B) to acquire a  
10 valid right-of-way for a tribal transportation facility under existing  
11 agreements under the Indian Self Determination and Education Assistance  
12 Act (including title VII of that Act) and section 202(b)(7) of title 23, United  
13 States Code.

14 (B) FUNDING; DEADLINES.—In any case in which a tribal  
15 government assumes, under subparagraph (A), the responsibility of the  
16 Secretary to acquire a valid right-of-way for a tribal transportation facility  
17 under this subsection—

18 (i) the costs of acquiring the right-of-way shall be payable from  
19 funds authorized to carry out this Act; and

20 (ii) the tribal government shall not be subject to any deadline  
21 specified in paragraph (2).

22 (4) LIMITATION.—In acquiring a right-of-way under this paragraph, the  
23 Secretary shall not require a tribal government to use tribal funds or Federal  
24 funds made available to the tribal government under any other Federal  
25 program.

26 (5) RIGHTS-OF-WAY RECORDS.—

27 (A) IN GENERAL.—Not later than 3 years after the date of enactment  
28 of this Act, the Secretary shall complete a comprehensive national update  
29 of rights-of-way records for all existing facilities located on Indian Lands  
30 as of the date of enactment of this Act to ensure compliance with specified  
31 Federal laws.

1 (B) REQUIREMENTS.—In completing the update of records under  
2 subparagraph (A), the Secretary shall—

3 (i) computerize and organize all rights-of-way records described in  
4 subparagraph (A); and

5 (ii) establish a system for ensuring that documentation of any new  
6 right-of-way under specified Federal laws is promptly added to the  
7 rights-of-way records database.

8 (C) AVAILABILITY.—The Secretary shall make each updated record  
9 under this paragraph available to the public in a commonly used mapping  
10 format.

11 (6) SPECIFIED FEDERAL LAWS.—For the purposes of this subsection,  
12 the term “specified Federal laws” means the following:

13 (A) The Act of March 3, 1901 (25 U.S.C. 311).

14 (B) Sections 1–4 and 6–8 of the Act of March 2, 1899 (25 U.S.C. 312  
15 - 318).

16 (C) The Act of May 26, 1928 (25 U.S.C. 318a).

17 (D) The Act of March 3, 1901 (25 U.S.C. 319).

18 (E) The Act of March 3, 1909 (25 U.S.C. 320).

19 (F) Section 1 of the Act of March 11, 1904 (25 U.S.C. 321).

20 (G) The Act of April 21, 1928 (25 U.S.C. 322 - 322a).

21 (H) The Act of February 5, 1948 (5 U.S.C. 323 - 328).

22 (b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be  
23 appropriated to carry out this section \$10,000,000 for each of fiscal years 2018  
24 through 2023.

25 (c) CLARIFICATION FOR TRIBALLY ADMINISTERED PROJECTS  
26 CARRIED OUT ON LANDS OWNED BY TRIBAL GOVERNMENT.—A tribal  
27 government shall not be required to obtain a right-of-way for any portion of a  
28 tribally-administered project that crosses Indian Lands if the tribal government  
29 owns 100 percent of the beneficial interest of the Indian Lands. Upon request of  
30 the tribal government, the Secretary shall record a tribal government’s dedication

of such land for a public purpose and facilitate the inclusion of the dedication on the Secretary’s right-of-way record database.

**SEC. 202. FACILITATING THE TRANSFER OF FUNDS FOR TRIBAL PROJECTS.**

(a) Section 202(b)(6)(A) of title 23, United States Code, is amended by striking the phrase “this chapter and section 125(e)” and inserting in its place “title 23 or chapter 53 of title 49, United States Code”.

(b) Section 202(b)(7)(A) of title 23, United States Code, is amended by striking “this chapter” and inserting in its place “title 23 or chapter 53 of title 49, United States Code”.

(c) At the end of section 202 of title 23, United States Code, create a new subsection (g) to read:

“(g) ELIGIBILITY FOR DISCRETIONARY AND COMPETITIVE GRANTS.—Notwithstanding any other provision of law, an Indian tribe may apply directly for and receive from the Secretary of Transportation any discretionary or competitive grant made available to a State or a political subdivision of a State under title 23 or chapter 53 of title 49, United States Code, in the same manner and under the same circumstances as a State or political subdivision of a State.”

**TITLE III – INNOVATING TRIBAL TRANSPORTATION  
INFRASTRUCTURE INITIATIVES**

**SEC. 301. TRIBAL INFRASTRUCTURE BANK.**

(a) IN GENERAL.—23 United States Code is amended to add a new section 611 to read:

“Sec. 611. TRIBAL INFRASTRUCTURE BANK.

“(a) DEFINITIONS.—In this section, terms defined in section 610(a) of this chapter have the meanings established in that section.

“(b) ESTABLISHMENT.—The Secretary of Transportation shall establish a tribal infrastructure bank for making loans and providing other forms of credit assistance to a tribal government, carrying out or proposing to carry out projects eligible for assistance under this section.

1 “(c) FUNDING.—

2 “(1) SEPARATE ACCOUNTS.—

3 “(A) IN GENERAL.—The tribal infrastructure bank established  
4 under this section shall maintain—

5 “(i) a separate highway account for Federal funds  
6 contributed to the bank under paragraph (2)(A) of this  
7 subsection; and

8 “(ii) a separate transit account for Federal funds  
9 contributed to the bank under paragraph (2)(B) of this  
10 subsection.

11 “(B) PROHIBITION.—No Federal funds contributed or credited  
12 to an account of the tribal infrastructure bank established under this  
13 section may be commingled with Federal funds contributed or  
14 credited to any other account of such bank.

15 “(2) FUNDING.—The following sums are authorized to be  
16 appropriated:

17 “(A) HIGHWAY ACCOUNT.—For the Highway Account  
18 of the tribal infrastructure bank, out of the Highway Trust Fund  
19 (other than the Mass Transit Account), \$8,500,000 for each of fiscal  
20 years 2018 through 2026.

21 “(B) TRANSIT ACCOUNT.—For the Transit Account of the  
22 tribal infrastructure bank, out of the Mass Transit Account,  
23 \$1,500,000 for each of fiscal years 2018 through 2026.

24 “(3) CAPITAL GRANTS

25 “(A) HIGHWAY ACCOUNT.—Federal funds deposited into  
26 the highway account of the tribal infrastructure bank under  
27 paragraph (2)(A) shall constitute for purposes of this section a  
28 capitalization grant for the highway account of the bank.

29 “(B) TRANSIT ACCOUNT.—Federal funds deposited into the  
30 transit account of the tribal infrastructure bank under paragraph  
31 (2)(B) shall constitute for purposes of this section a capitalization

1 grant for the transit account of the bank.

2 “(d) FORMS OF ASSISTANCE.—

3 “(1) IN GENERAL.—The tribal infrastructure bank established  
4 under this section may make loans or provide other forms of credit  
5 assistance to a tribal government in an amount equal to all or a part of the  
6 cost of carrying out a project eligible for assistance under this section.

7 “(2) TREATMENT.—The amount of any loan or other form of credit  
8 assistance provided for the project may be subordinated to any other debt  
9 financing for the project.

10 “(3) INITIAL ASSISTANCE.—Initial assistance provided with  
11 respect to a project from Federal funds deposited into an infrastructure bank  
12 under this section may not be made in the form of a grant.

13 “(e) ELIGIBLE PROJECTS.--Subject to subsection (d), funds in the tribal  
14 infrastructure bank established under this section may be used only to provide  
15 assistance for—

16 “(1) projects eligible for assistance under title 23, United States Code  
17 and chapter 53 of title 49, United States Code; and

18 “(2) any other projects relating to surface transportation that the  
19 Secretary determines to be appropriate.

20 “(f) RESPONSIBILITY FOR ADMINISTRATION.—The tribal  
21 infrastructure banks shall be administered by a federally chartered corporation.

22 “(g) INFRASTRUCTURE BANK REQUIREMENTS.—The federally  
23 chartered corporation shall—

24 “(1) ensure that the bank maintains on a continuing basis an  
25 investment grade rating on its debt, or has a sufficient level of bond or debt  
26 financing instrument insurance, to maintain the viability of the bank;

27 “(2) ensure that investment income derived from funds deposited to  
28 an account of the bank are--

29 “(A) credited to the account;

30 “(B) available for use in providing loans and other forms of credit  
31 assistance to projects eligible for assistance from the account; and

1 “(C) invested in United States Treasury securities, bank deposits,  
2 or such other financing instruments as the Secretary may approve to  
3 earn interest to enhance the leveraging of projects assisted by the bank;

4 “(3) ensure that any loan from the bank will bear interest at or below  
5 market interest rates, as determined by the federally chartered corporation,  
6 to make the project that is the subject of the loan feasible;

7 “(4) ensure that repayment of any loan from the bank will commence  
8 not later than—

9 “(A) 5 years after the project has been completed; or

10 “(B) in the case of a highway project, the date the facility has  
11 opened to traffic, whichever is later;

12 “(5) set a maximum term for the repayment of loans such that the  
13 Tribal Infrastructure Bank can be self-sustaining;

14 “(6) ensure that the term for repaying any loan will in no event exceed  
15 20 years after the date of the first payment on the loan; and

16 “(7) require the bank to make an annual report to the Secretary of  
17 Transportation on its status no later than September 30 of each year and  
18 such other reports as the Secretary may require under guidelines issued to  
19 carry out this section.

20 “(h) APPLICABILITY OF FEDERAL LAW.—

21 “(1) IN GENERAL.—The requirements of section 202(b) of this title  
22 that would otherwise apply to funds made available to a tribal government  
23 under section 202(b) of this title and projects assisted with those funds shall  
24 apply to—

25 “(A) funds authorized to be contributed to the tribal infrastructure  
26 bank under this section; and

27 “(B) projects assisted by the bank through the use of the funds,  
28 except to the extent that the Secretary determines that any  
29 requirement of such section is not consistent with the objectives of  
30 this section.

1 “(2) REPAYMENTS.—

2 “(A) IN GENERAL.—The requirements of this title and title 49,  
3 United States Code shall apply to repayments from non-Federal  
4 sources to an infrastructure bank from projects assisted by the bank.

5 “(B) TREATMENT.—Such a repayment shall be considered to be  
6 Federal funds.

7 “(i) UNITED STATES NOT OBLIGATED.—

8 “(1) IN GENERAL.—The deposit of Federal funds into an  
9 infrastructure bank established under this section shall not be construed as  
10 a commitment, guarantee, or obligation on the part of the United States to  
11 any third party, nor shall any party have any right against the United States  
12 for payment solely by virtue of the contribution.

13 “(2) REQUIREMENT.—Any security or debt-financing instrument  
14 issued by the infrastructure bank shall expressly state that the security or  
15 instrument does not constitute a commitment, guarantee, or obligation of  
16 the United States.”

17 (b) CLERICAL AMENDMENT.—The analysis for chapter 6 of title 23,  
18 United States Code, is amended by inserting after the item relating to section 610  
19 the following:

20 “611. Tribal Infrastructure Bank.”

21 **SEC. 302. NATIONAL TRIBAL ASSET MANAGEMENT PROGRAM.**

22 (a) IN GENERAL. —Section 201(c)(5) of Title 23, United States Code, is  
23 amended to add a new subparagraph (A) to read as follows:

24 “(A) NATIONAL TRIBAL ASSET MANAGEMENT PROGRAM.

25 “(1) ESTABLISHMENT. —The Secretary in cooperation with the  
26 Secretary of the Interior shall establish and implement a national tribal  
27 asset management program under this section.

28 “(2) PURPOSES.—The purpose of the national tribal asset  
29 management program shall be-

30 “(a) to provide support for the condition and performance of  
31 tribal transportation facilities and systems;

1 “(b) to ensure that investment of federal and tribal funds in  
2 transportation facility construction are directed to support progress  
3 toward the achievement of performance targets consistent with 23  
4 U.S.C. § 119 National highway performance program and  
5 established in an asset management plan of a Tribe for the tribal  
6 transportation system.

7 “(3) ELIGIBLE FACILITIES.—Except as provided in subsection  
8 (4), to be eligible for funding apportioned under this section, a facility shall  
9 be located on the national tribal transportation facility inventory as defined  
10 in § 202(b)(1) and must have been previously constructed with or eligible  
11 for construction using federal or tribal transportation funds.

12 “(4) ELIGIBLE PROJECTS. —Funds apportioned to a Tribe to  
13 carry out the tribal transportation asset management program may be  
14 obligated only for a project on an eligible facility that is—

15 “(1)(A) a project or part of a program of projects supporting  
16 progress toward the achievement of national tribal transportation  
17 performance goals for improving infrastructure condition, safety,  
18 mobility, or freight movement on a tribal transportation facility  
19 listed on the national tribal transportation facility inventory; and

20 “(B) consistent with the tribe’s long-range transportation  
21 plan; and

22 “(2) for 1 or more of the following purposes:

23 “(A) Resurfacing (including sealing, application of dust  
24 palliatives, replacement of original surface materials),  
25 restoration, preservation or operational improvements of  
26 segments of the tribe’s transportation system.

27 “(B) Preservation, and protection (including scour  
28 countermeasures, seismic retrofits, impact protection measures,  
29 security countermeasures, and protection against extreme  
30 events) of bridges on the National Bridge Inventory and part of  
31 a tribe’s national tribal transportation facility inventory.

1                   “(C) Training of personnel to assure correct  
2                   implementation of preservation measures.

3                   “(5) APPLICABLE LAWS AND REGULATIONS.—Notwithstanding  
4                   any other law or regulation, a tribal government shall not be subject to the  
5                   laws, regulations or other requirements applicable to state transportation  
6                   departments under the Federal-Aid Highway System, except to the extent  
7                   such laws and regulations are expressly made applicable to contracts,  
8                   compacts or government-to-government agreements entered into pursuant  
9                   to the Indian Self-Determination and Education Assistance Act (25 U.S.C.  
10                  450 et seq.), the Tribal Transportation Self-Governance Program, or  
11                  contracts and agreements pursuant to sections 202(a)(2)(B) and 202(b)(6)  
12                  and (7), as amended. Unless expressly agreed to by the participating Indian  
13                  tribe, the participating Indian tribe shall not be subject to any agency  
14                  circular, policy, manual, guidance, or rule adopted by the Department of  
15                  Transportation, except 25 C.F.R. Part 170, or regulations promulgated  
16                  under section 207(n) of title 23, United States Code.

17                  “(6) AUTHORIZATION OF APPROPRIATIONS.—There is  
18                  authorized to be appropriated from the Highway Trust Fund (other than the  
19                  Mass Transit Account) to carry out this section \$50,000,000 for fiscal year  
20                  2018, \$55,000,000 for fiscal year 2019, \$60,000,000 for fiscal year 2020,  
21                  \$65,000,000 for fiscal year 2021, \$70,000,000 for fiscal year 2022, and  
22                  \$75,000,000 for fiscal years 2023 through 2026.

23                  “(7) Distribution.—The Secretary shall develop a national distribution  
24                  formula for purposes of distributing funding under this section that provides  
25                  priority to:

26                         “(A) Tribal transportation facilities identified within a tribal  
27                         transportation asset management plan that are:

28                                 “(1) owned by the BIA and were constructed, reconstructed,  
29                                 or rehabilitated after 1995; or

30                                 “(2) owned by a tribal government and were constructed,  
31                                 reconstructed, or rehabilitated after 1995.

“(B) The development of tribal asset management plans.

## **TITLE IV – TRIBAL TRANSPORTATION INFRASTRUCTURE**

### **INVESTMENTS**

#### **SEC. 401. TRIBAL TRANSPORTATION PROGRAM**

##### **INFRASTRUCTURE INVESTMENTS.**

(a) TRIBAL TRANSPORTATION PROGRAM. — In addition to funds made available from any other source to carry out the Tribal Transportation Program under section 202 of title 23, United States Code, there are appropriated \$500,000,000 for each fiscal year 2018 through 2026, out of the Highway Trust Fund (other than the Mass Transit Account), for eligible projects listed on a Tribal Transportation Improvement Program approved by the Federal Highway Administration, for investments in transportation infrastructure at Indian reservations and at Alaska Native villages, to remain available for a period of 3 fiscal years following the fiscal year for which the amounts are appropriated: Provided further, That 18 months following the enactment of this Act, to ensure the prompt use of the amount provided for investments at Indian reservations and Alaska Native villages, the Secretary of Transportation and the Secretary of Interior shall have the authority to redistribute unobligated funds within the respective program for which the funds were appropriated: Provided further, That up to 3 percent of the funding provided herein may be used by the Secretary and the Secretary of the Interior, as appropriate, for program management and oversight and project-related administrative expenses: Provided further, That funds made available under this heading shall be administered as if apportioned under chapter 2 of title 23, United States Code: Provided further, That the Federal share payable on account of any project or activity carried out with funds made available under this heading under chapter 2 of title 23, United States Code, shall be 100 percent of the total cost thereof: Provided further, That funding provided under this heading shall be in addition to any and all funds provided for fiscal years 2018 through 2026 in any other Act for the Tribal Transportation Program and shall not affect the distribution of funds provided for the Tribal Transportation Program in any other Act: Provided further, That that amount made available

1 under this heading shall not be subject to any limitation on obligations for the  
2 Tribal Transportation Program set forth in any Act: Provided further, That section  
3 1101(b) of Public Law 114-151 shall apply to funds apportioned under this  
4 heading.

5 (b) TRIBAL TRANSPORTATION FACILITY BRIDGE  
6 PROGRAM. — In addition to funds made available from any other source to carry  
7 out the Tribal Transportation Bridge Program under section 202(d) of title 23,  
8 United States Code, there are appropriated \$75,000,000 for each fiscal year 2018  
9 through 2026, out of the Highway Trust Fund (other than the Mass Transit  
10 Account), to remain available for a period of 3 fiscal years following the fiscal  
11 year for which the amounts are appropriated, for eligible projects for the tribal  
12 transportation facility bridges program under section 202(d) of title 23, United  
13 States Code, to carry out any planning, design, engineering, preconstruction,  
14 construction and inspection of new or replacement tribal transportation facility  
15 bridges, or to replace, rehabilitate, seismically retrofit, paint, apply calcium  
16 magnesium acetate, sodium acetate/formate, or other environmentally acceptable,  
17 minimally corrosive anti-icing and de-icing composition; or to implement any  
18 countermeasure for deficient tribal transportation facility bridges, including  
19 multiple-pipe culverts; Provided further, That the Federal share payable on  
20 account of any project or activity carried out with funds made available under this  
21 heading shall be, at the option of the recipient, up to 100 percent of the total cost  
22 thereof: Provided further, That that amount made available under this heading shall  
23 not be subject to any limitation on obligations for the tribal transportation facility  
24 bridge program set forth in any Act; Provided further, that except as otherwise  
25 provided herein, the funds provided under this heading shall be distributed in  
26 accordance with section 202(d) of title 23: Provided further, That funding provided  
27 under this heading shall be in addition to any and all funds provided for fiscal years  
28 2018 through 2026 in any other Act for Tribal Transportation Facility Bridge  
29 program and shall not affect the distribution of funds provided for Tribal  
30 Transportation Facility Bridge program in any other Act.

**SEC. 402. TRIBAL TRANSIT PROGRAM INFRASTRUCTURE  
INVESTMENTS.**

(a) Section 5311(c)(1) of title 49, United States Code, is amended—

(1) in subsection (A) by striking “\$5,000,000 for each fiscal year” and inserting in its place “\$10,000,000 for fiscal year 2018, \$15,000,000 for fiscal year 2019, \$20,000,000 for fiscal year 2020, and \$25,000,000 for fiscal year 2021, \$30,000,000 for fiscal year 2022, and \$35,000,000 for fiscal years 2023 through 2026.”; and

(2) in subsection (B) by striking \$30,000,000 for each fiscal year” and inserting in its place “\$45,000,000 for fiscal year 2018, \$50,000,000 for fiscal year 2019, \$55,000,000 for fiscal year 2020, \$60,000,000 for fiscal year 2021, \$65,000,000 for fiscal year 2022, \$70,000,000 for fiscal year 2023, and \$75,000,000 for fiscal years 2024 through 2026.”

(b) Section 5311(j) of title 49, United States Code, is amended by adding at the end the following:

“(iv) Before calculating and distributing formula grants under this section, the Secretary shall ensure that an Indian tribe that received a public transportation grant under section 3013(c) of Pub. L. 109-59 during fiscal years 2005 through 2012, receives not less than the highest amount awarded to the Indian tribe for operating costs received under section 3013(c) of Pub. L. 109-59 if, by operation of the formula allocation in this section, the Indian tribe’s formula grant award falls below an award previously made to the Indian tribe under section 3013(c) of Pub. L. 109-59.”

**SEC. 403. NATIONALLY SIGNIFICANT FEDERAL LANDS AND  
TRIBAL PROJECTS PROGRAM.**

(a) Section 1123 of the Fixing America’s Surface Transportation Act, Pub. L. 114-94, 129 Stat. 1370, 23 U.S.C. § 201 note, is amended as follows—

(1) in subparagraph (c)(3) of the section by striking the period at the end and inserting the following: “; except that for a Tribal transportation project, listed on the National Tribal Transportation Facility Inventory, a project shall be eligible under this section if it has an estimated cost, based on

1 the results of preliminary engineering, equal to or exceeding \$1,500,000, with  
 2 priority consideration given to projects with an estimated cost equal to or  
 3 exceeding \$3,000,000.”; and

4 (2) in subparagraph (h) of the section by striking everything after the  
 5 heading and inserting: “There is authorized to be appropriated to carry out this  
 6 section, out of the Highway Trust Fund (other than the Mass Transit Account),  
 7 \$100,000,000 for each fiscal of fiscal years 2018 through 2020. Such sums  
 8 shall remain available for a period of three fiscal years following the fiscal year  
 9 for which the amounts are appropriated.”

10 **SEC. 404. TRIBAL HIGH PRIORITY PROJECTS PROGRAM.**

11 Section 202 of title 23 United States Code is amended to add a new paragraph  
 12 (h) to read:

13 “(h) TRIBAL HIGH PRIORITY PROJECTS PROGRAM. —

14 “(1) There is established a high priority projects program to permit any Indian  
 15 tribe to finance a high priority project.

16 “(a) DEFINITIONS.—In this section:

17 “(1) EMERGENCY OR DISASTER.—The term ‘emergency or  
 18 disaster’ means damage to a tribal transportation facility that—

19 “(A) renders the tribal transportation facility impassable or  
 20 unusable;

21 “(B) is caused by—

22 “(i) a natural disaster over a widespread area; or

23 “(ii) a catastrophic failure from an external cause; and

24 “(C) would be eligible under the emergency relief program under  
 25 section 125 of title 23, United States Code, but does not meet the funding  
 26 thresholds required by that section.

27 “(2) LIST.—The term ‘list’ means the funding priority list developed  
 28 under subsection (c)(5).

29 “(3) PROGRAM.—The term ‘program’ means the Tribal High Priority  
 30 Projects program established under subsection (b)(1).

1 “(4) PROJECT.—The term ‘project’ means a project provided funds  
2 under the program.

3 “(b) PROGRAM.—

4 “(1) IN GENERAL.—The Secretary of Transportation shall use  
5 amounts made available under this section to carry out a Tribal High  
6 Priority Projects program under which funds shall be provided to eligible  
7 applicants in accordance with this section.

8 “(2) ELIGIBLE APPLICANTS.—Applicants eligible for program  
9 funds under this section include—

10 “(A) an Indian tribe whose annual allocation of funding under  
11 section 202 of title 23, United States Code, is insufficient to complete  
12 the highest priority project of the Indian tribe;

13 “(B) a governmental subdivision of an Indian tribe—

14 “(i) that is authorized to administer the funding of the Indian  
15 tribe under section 202 of title 23, United States Code; and

16 “(ii) for which the annual allocation under that section is  
17 insufficient to complete the highest priority project of the Indian  
18 tribe; or

19 “(C) any Indian tribe that has an emergency or disaster with respect  
20 to a transportation facility included on the national inventory of tribal  
21 transportation facilities under section 202(b)(1) of title 23, United  
22 States Code.

23 “(c) PROJECT APPLICATIONS; FUNDING.—

24 “(1) IN GENERAL.—To apply for funds under this section, an eligible  
25 applicant shall submit to the Department of Transportation or the  
26 Department of Interior an application that includes—

27 “(A) project scope of work, including deliverables, budget, and  
28 timeline;

29 “(B) the amount of funds requested;

30 “(C) project information addressing—

31 “(i) the ranking criteria identified in paragraph (3); or

1 “(ii) the nature of the emergency or disaster;

2 “(D) documentation that the project meets the definition of a tribal  
3 transportation facility and is included in the national inventory of tribal  
4 transportation facilities under section 202(b)(1) of title 23, United  
5 States Code;

6 “(E) documentation of official tribal action requesting the project;

7 “(F) documentation from the Indian tribe providing authority for  
8 the Secretary or the Secretary of the Interior to place the project on a  
9 transportation improvement program if the project is selected and  
10 approved; and

11 “(G) any other information the Secretary or the Secretary of the  
12 Interior considers appropriate to make a determination.

13 “(2) LIMITATION ON APPLICATIONS.—An applicant for funds  
14 under the program may only have 1 application for assistance under this  
15 section pending at any 1 time, including any emergency or disaster  
16 application.

17 “(3) APPLICATION RANKING.—

18 “(A) IN GENERAL.—The Secretary and the Secretary of the  
19 Interior shall determine the eligibility of, and fund, program  
20 applications, subject to the availability of funds.

21 “(B) RANKING CRITERIA.—The project ranking criteria for  
22 applications under this section shall include—

23 “(i) the existence of safety hazards with documented fatality  
24 and injury data resulting from motor vehicle crashes;

25 “(ii) the number of years since the Indian tribe last completed a  
26 construction project funded by section 202 of title 23, United States  
27 Code;

28 “(iii) the readiness of the Indian tribe to proceed to construction  
29 or bridge design need;

30 “(iv) the percentage of project costs matched by funds that are  
31 not provided under section 202 of title 23, United States Code,

(with projects with a greater percentage of other sources of matching funds ranked ahead of lesser matches);

“(v) the amount of funds requested, with requests for lesser amounts given greater priority;

“(vi) the challenges caused by geographic isolation; and

“(vii) all weather access for employment, commerce, health, safety, educational resources, or housing.

“(4) FUNDING PRIORITY LIST.—

“(A) IN GENERAL.—The Secretary and the Secretary of the Interior shall jointly produce a funding priority list that ranks the projects approved for funding under the program.

“(B) LIMITATION.—The number of projects on the list shall be limited by the amount of funding made available.

“(5) TIMELINE.—The Secretary and the Secretary of the Interior shall—

“(A) require applications for funding no sooner than 60 days after funding is made available pursuant to subsection (a);

“(B) notify all applicants and Regions in writing of acceptance of applications;

“(C) rank all accepted applications, develop the funding priority list, and return unaccepted applications to the applicant with an explanation of deficiencies;

“(D) notify all accepted applicants of the projects included on the funding priority list no later than 180 days after the application deadline has passed pursuant to subparagraph (A); and

“(E) distribute funds to successful applicants.

“(d) EMERGENCY OR DISASTER PROJECT APPLICATIONS.—

“(1) IN GENERAL.—Notwithstanding subsection (c)(5), an eligible applicant may submit an emergency or disaster project application at any time during the fiscal year.

“(2) CONSIDERATION AS PRIORITY.—The Secretary shall—

1 “(A) consider project applications submitted under paragraph (1) to  
2 be a priority; and

3 “(B) fund the project applications in accordance with paragraph (3).

4 “(3) FUNDING.—

5 “(A) IN GENERAL.—If an eligible applicant submits an  
6 application for a project under this subsection before the issuance of  
7 the list under subsection (c)(4) and the project is determined to be  
8 eligible for program funds, the Secretary or the Secretary of the Interior  
9 shall provide funding for the project before providing funding for other  
10 approved projects on the list.

11 “(B) SUBMISSION AFTER ISSUANCE OF LIST.—If an  
12 eligible applicant submits an application under this subsection after the  
13 issuance of the list under subsection (c)(4) and the distribution of  
14 program funds in accordance with the list, the Secretary or the  
15 Secretary of the Interior shall provide funding for the project on the  
16 date on which unobligated funds provided to projects on the list are  
17 returned to the Department or the Department of the Interior.

18 “(C) EFFECT ON OTHER PROJECTS.—If the Secretary or the  
19 Secretary of the Interior uses funding previously designated for a  
20 project on the list to fund an emergency or disaster project under this  
21 subsection, the project on the list that did not receive funding as a result  
22 of the redesignation of funds shall move to the top of the list the  
23 following year.

24 “(4) EMERGENCY OR DISASTER PROJECT COST.—The cost of  
25 a project submitted as an emergency or disaster under this subsection shall  
26 be at least 10 percent of the distribution of funds of the Indian tribe under  
27 section 202(b) of title 23, United States Code.

28 “(e) LIMITATION ON USE OF FUNDS.—Program funds shall not be  
29 used for—

30 “(1) transportation planning;

31 “(2) research;

1 “(3) routine maintenance activities;

2 “(4) structures and erosion protection unrelated to transportation and  
3 roadways;

4 “(5) general reservation planning not involving transportation;

5 “(6) landscaping and irrigation systems not involving transportation  
6 programs and projects;

7 “(7) work performed on projects that are not included on a  
8 transportation improvement program approved by the Federal Highway  
9 Administration, unless otherwise authorized by the Secretary or the  
10 Secretary of the Interior; or

11 “(8) the condemnation of land for recreational trails.

12 “(f) LIMITATION ON PROJECT AMOUNTS.—Project funding shall be  
13 limited to a maximum of \$1,000,000 per application, except that funding for  
14 disaster or emergency projects shall also be limited to the estimated cost of  
15 repairing damage to the tribal transportation facility; provided, however, that  
16 should appropriations for this sections exceed \$35,000,000, project funding,  
17 other than for disaster or emergency projects, shall be limited to a maximum  
18 of \$1,500,000.

19 “(g) COST ESTIMATE CERTIFICATION.—All cost estimates prepared  
20 for a project shall be required to be submitted by the applicant to the Secretary  
21 and the Secretary of the Interior for certification and approval.

22 “(h) AUTHORIZATION OF APPROPRIATIONS.—

23 “(1) IN GENERAL.—There are authorized to be appropriated, out of  
24 Highway Trust Fund (other than the Mass Transit Account), \$35,000,000  
25 to carry out the program for fiscal years 2018 and 2019; \$40,000,000 for  
26 fiscal years 2020 and 2021; \$45,000,000 for fiscal years 2022 and 2023;  
27 and \$50,000,000 for fiscal years 2024 through 2026.

28 “(2) ADMINISTRATION.—The funds made available under  
29 paragraph (1) shall be administered in the same manner as funds made  
30 available for the tribal transportation program under section 202 of title 23,  
31 United States Code, except that—

1           “(A) the funds made available for the program shall remain  
2 available until September 30 of the third fiscal year after the year  
3 appropriated; and

4           “(B) the Federal share of the cost of a project shall be 100 percent.”

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6                               \*               \*               \*