114TH CONGRESS

1ST SESSION **S. \_\_\_\_\_\_**

To amend the Moving Ahead for Progress in the 21st Century to provide further self-governance and self-determination by Indian tribes, and for other purposes.

IN THE SENATE

\_\_\_\_\_\_\_\_, \_\_, 2015

Mr. \_\_\_\_\_\_\_\_\_\_\_(for himself and Mr. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_), introduced the following bill; which was referred to the Committee on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**A BILL**

To amend the Moving Ahead for Progress in the 21st Century to provide further self-governance and self-determination by Indian tribes, 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; TABLE OF CONTENTS.**

1. SHORT TITLE.-This Act may be cited as the “Tribal Transportation Unity Act Amendments of 2015”.
2. TABLE OF CONTENTS.-The Table of contents of this Act is as follows:
3. Sec. 1. Short title; table of contents.

Title I – TRIBAL TRANSPORTATION

Sec. 101. Authorization of appropriations.

Sec. 102. Establishment of Tribal Asset Management Program.

Sec. 103. Tribal Transit Program.

Sec. 104 Tribal High Priority Projects.

Sec. 105. Redistribution of Unused Obligation Authority.

Sec. 106. Tribal Transportation Bridge Program.

Sec. 107. Minimum Funding Allocation.

Sec. 108. Obligation Ceiling.

Sec. 109. Administrative Expenses.

Sec. 110. Tribal Transportation Safety Programs.

Sec. 111. Federal Aid Funds.

Sec. 112. Grants.

Sec. 113. Right of Way.

Sec. 114. Compliance with Environmental Law.

Sec. 115. Tribal Infrastructure Bank.

Sec. 116. Tribal Technical Assistance Centers.

Sec. 117. Emergency Relief Funding.

Sec. 118. Transportation Alternatives Program.

Sec. 119. National Bridge Inventory.

Title II – TRIBAL SELF GOVERNANCE

Sec. 201. Tribal Transportation Self-Governance Program.

# TITLE I—TRIBAL TRANSPORTATION

# SECTION 101. AUTHORIZATION OF APPROPRIATIONS.

(a) Section 1101(a)(3)(A) of Pub. L. 112-141, as amended, is amended to read:“Section 1101. AUTHORIZATION OF APPROPRIATIONS

“(a) IN GENERAL. —The following sums are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account):

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(3) Federal Lands and Tribal Transportation Program.—

(A) Tribal Transportation Program.—For the tribal transportation program under section 202 of title 23, United States Code—

“(i) $800,000,000 for fiscal year 2015;

“(ii) $850,000,000 for fiscal year 2016;

“(iii) $900,000,000 for fiscal year 2017;

“(iv) $950,000,000 for fiscal year 2018;

“(v) $1,000,000,000 for fiscal year 2019; and

“(vi) $1,050,000,000 for fiscal year 2020.”

# SECTION 102. ESTABLISHMENT OF TRIBAL ASSET MANAGEMENT PROGRAM.

1. Title 23, United States Code, is amended to add a new section “National Tribal Asset Management Program,” to read:

“(X) National tribal asset management program

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

“(b) PURPOSES.-The purpose of the national tribal asset management program shall be-

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

“(2) to ensure that investment of federal and tribal funds in transportation facility construction are directed to support progress toward the achievement of performance targets consistent with 23 USC 119 National highway performance program and established in an asset management plan of a Tribe for the tribal transportation system.

“(c) ELIGIBLE FACILITES.- Except as provided in subsection (d), to be eligible for funding apportioned under this section, a facility shall be located on the tribal transportation system as defined in § 202(b)(1) and must have been previously constructed using federal or tribal transportation funds.

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

“(1)(A) a project or part of a program of projects supporting progress toward the achievement of national tribal transportation performance goals for improving infrastructure condition, safety, mobility, or freight movement on the tribal transportation system; and

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

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

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

“(B) Preservation, and protection (including scour countermeasures, seismic retrofits, impact protection measures, security countermeasures, and protection against extreme events) of bridges on the National Bridge Inventory and part of a tribe’s transportation system.

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

“(e) APPLICABLE LAWS AND REGULATIONS. – Notwithstanding any other law or regulation, a tribal government shall not be subject to the laws, regulations or other requirements applicable to state transportation departments under the Federal-Aid Highway System, except to the extent such laws and regulations are expressly made applicable to contracts, compacts or government-to-government agreements entered into pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), as amended. Unless expressly agreed to by the participating Indian tribe, the participating Indian tribe shall not be subject to any agency circular, policy, manual, guidance, or rule adopted by the Department of Transportation, except regulations promulgated under section 207(n) of this Act.

“(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section $50,000,000 for fiscal year 2015, $55,000,000 for fiscal year 2016, $60,000,000 for fiscal year 2017, $65,000,000 for fiscal year 2018, $70,000,000 for fiscal year 2019, and $75,000,000 for fiscal year 2020.

“(g) Distribution.- The Secretary shall develop a national distribution formula for purposes of distributing funding under this section that provides priority to:

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

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

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

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

# SECTION 103. TRIBAL TRANSIT PROGRAM.

1. Section 5311 of title 49, United States Code, as amended by section 20010 of Pub. L. 112-141, is amended as follows:

§ 5311. Formula grants for rural areas

**\* \* \***

“(c) APPORTIONMENTS.—

“(1) PUBLIC TRANSPORTATION ON INDIAN RESERVATIONS.—Of the amounts made available or appropriated for each fiscal year pursuant to section 5338(a)(2)(E) to carry out this paragraph, the following amounts shall be apportioned for grants to Indian tribes for any purpose eligible under this section, under such terms and conditions as may be established by the Secretary:

“(A) The following amounts shall be distributed on a competitive basis by the Secretary for each fiscal year:

“(1) $10,000,000 for fiscal year 2015;

“(2) $15,000,000 for fiscal year 2016;

“(3) $20,000,000 for fiscal year 2017;

“(4) $25,000,000 for fiscal year 2018;

“(5) $30,000,000 for fiscal year 2019; and

“(6) $35,000,000 for fiscal year 2020.

“(B) The following amounts shall be apportioned as formula grants, as provided in subsection (j) for each fiscal year:

“(1) $35,000,000 for fiscal year 2015;

“(2) $40,000,000 for fiscal year 2016;

“(3) $45,000,000 for fiscal year 2017;

“(4) $50,000,000 for fiscal year 2018;

“(5) $55,000,000 for fiscal year 2019; and

“(6) $60,000,000 for fiscal year 2020.

**\* \* \***

(b) Section 5311(j)(1)(A) is amended to add a new subparagraph (iv) as follows:

“(j) FORMULA GRANTS FOR PUBLIC TRANSPORTATION ON INDIAN RESERVATIONS.—

“(1) APPORTIONMENT.—

“(A) IN GENERAL.—Of the amounts described in subsection (c)(1)(B)—

\* \* \*

“(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.”

# SECTION 104. TRIBAL HIGH PRIORITY PROJECTS.

(a) Sections 1123(f) and (h)(1) of Pub. L. 112-141, are amended as follows:

“(f) LIMITATION ON PROJECT AMOUNTS.— For fiscal year 2015, project funding shall be limited to a maximum of $1,000,000 per application, but for each fiscal year thereafter in which funding for this program exceeds $35,000,000, project funding shall be limited to a maximum of $1,500,000 per application, except that funding for disaster or emergency projects shall also be limited to the estimated cost of repairing damage to the tribal transportation facility regardless of fiscal year.

“(h) AUTHORIZATION OF APPROPRIATIONS.—

“(1) IN GENERAL.—There is authorized to be appropriated from the Highway Trust Fund to carry out the program $35,000,000 for fiscal year 2015, $40,000,000 for fiscal year 2016, $45,000,000 for fiscal year 2017, $50,000,000 for fiscal year 2018, $55,000,000 for fiscal year 2019, and $60,000,000 for fiscal year 2020.”

# SECTION 105. REDISTRIBUTION OF UNUSED OBLIGATION AUTHORITY.

1. Amend section 201(b) of title 23 United States Code, Federal Lands and Tribal Transportation Programs, to add a new subparagraph (8) to read:

“(8) REDISTRIBUTION OF UNUSED OBLIGATION AUTHORITY.- To the extent that the Secretary is otherwise required to redistribute unused obligation authority appropriated for purposes other than section 202 of this Act, a minimum of 10 percent of such unused obligation authority shall be used by the Secretary to competitively award high priority projects to any Indian tribe otherwise eligible to receive Tribal shares under section 202, to ensure greater safe access to markets for American Indian and Alaska Native communities that are, relative to other American Indian and Alaska Native communities, more remotely located from project and essential service markets under such criteria as the Secretary shall establish by regulation.”

# SECTION 106. TRIBAL TRANSPORTATION BRIDGE PROGRAM.

1. Section 202(d)(2) of title 23 United States Code is amended to read as follows:

“**(2) Funding.** For the tribal transportation facility bridges program, the following amounts for the following purposes:

“(i) $75,000,000 for fiscal year 2015;

“(ii) $80,000,000 for fiscal year 2016;

“(iii) $85,000,000 for fiscal year 2017;

“(iv) $90,000,000 for fiscal year 2018;

“(v) $95,000,000 for fiscal year 2019; and

“(vi) $100,000,000 for fiscal year 2020.

“(A) to carry out any planning, design, engineering, preconstruction, construction, and inspection of new or replacement tribal transportation facility bridges, or to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and deicing composition; or

“(B) to implement any countermeasure for deficient tribal transportation facility bridges, including multiple-pipe culverts.”

# SECTION 107. MINIMUM FUNDING ALLOCATION.

1. Amend 23 U.S.C. § 202(b)(3) to insert a new subparagraph (D):

“(D) Tribal Minimum Allocation.- When TTP allocations increase to a level where the total funding available for the distribution under this subsection plus the 2 percent transportation planning distribution under subsection (c) is no less than the amount available for the FY2014 distributions plus the amount needed to provide every tribe a total funding formula distribution of no less than $75,000, the Secretary shall allocate funds such that each tribe’s total TTP Program formula distributions is no less than $75,000.”

# SECTION 108. OBLIGATION CEILING.

1. Section 1102 of the Moving Ahead for Progress in the 21st Century

Act (MAP-21) is amended in subsection (b) by striking “and” at the end of clause (11), by striking “.” at the end of clause (12), by inserting “; and” at the end of clause (12) and by adding at the end the following:

“(13) section 202 of title 23, United States Code.”

# SECTION 109. ADMINISTRATIVE EXPENSES.

1. Subsection (a)(6) of Section 202 title 23 United States Code is amended as follows:

“(6) Administrative Expenses.—Of the funds authorized to be appropriated for the tribal transportation program, not more than 5 percent up to a maximum amount of $28 million annually, whichever is lesser, may be used by the Secretary or the Secretary of the Interior for program management and oversight and project-related administrative expenses.”

# SECTION 110. TRIBAL TRANSPORTATION SAFETY PROGRAMS.

1. Section 104(c)(2)(A) of title 23, United States Code, is amended as follows:

“§ 104. Apportionment

\* \* \*

“(c) Calculation of State amounts.—

\* \* \*

“(2) For Fiscal Year 2015 – 2020—

“(A) STATE SHARE.—For fiscal years 2015-2020, the amount for each State of combined apportionments for the national highway performance program under section 119, the surface transportation program under section 133, the highway safety improvement program under section 148, the congestion mitigation and air quality improvement program under section 149, and to carry out section 134 shall be determined as follows:

\* \* \*

“(ii) ADJUSTMENTS TO AMOUNTS.—The initial amounts resulting from the calculation under clause (i) shall be adjusted to ensure that, for each State, the amount of combined apportionments for the programs shall not be less than 95 percent of the estimated tax payments attributable to highway users in the State paid into the Highway Trust Fund (other than the Mass Transit Account) in the most recent fiscal year for which data are available; provided, however, that of the amount apportioned to the States for the highway safety improvement program under section 104(b)(3), the Secretary shall apportion at least 2 percent to be used for competitive grants to be made directly by the Secretary to Indian tribes to reduce traffic fatalities and injuries on Tribal Transportation systems.

1. Section 402(c)(2) of title 23, United States Code, is amended by striking “2 percent” and inserting “3 ½ percent”.

# SECTION 111. FEDERAL AID FUNDS.

1. Sections 202(b)(6) (A) and (7)(A) of title 23, United States Code,

are amended by striking “this chapter and section 125(e)” and “this chapter,” respectively, and inserting “title 23 or chapter 53 of title 39, United States Code” in lieu thereof in both places.

# SECTION 112. GRANTS.

1. At the end of Section 202 of title 23, United States Code, create a new subsection (g) to read as follows:

“(g) Eligibility for Discretionary and Competitive Grants.—Notwithstanding any other provision of law, an Indian Tribe may directly apply for and receive from the Secretary any discretionary or competitive grant made available to a State or a political subdivision of a State under this title or chapter 53 of title 49 in the same manner and under the same circumstances as a State or a political subdivision of a State.

# SECTION 113. RIGHT OF WAYS.

1. Section 202 of title 23, United States Code, is amended to add a new section (g) to read:

“(g) RIGHTS-OF-WAY AND CORRIDOR MANAGEMENT.—

“(A) APPLICABLE REGULATIONS—

“(i) IN GENERAL.—Notwithstanding any other provision of law (including regulations), a tribal government that is performing a construction projects under the authority of the Indian Self-Determination Act, 25 U.S.C. § 450 et seq. (including Title VII of that Act) or section 202(b) of this title shall not be required to deposit estimated damages in advance or to indemnify the United States, the owners of the land, or occupants of the land.

“(ii) CRITERIA.—In accordance with the negotiated rulemaking procedure under this Act, the Secretary shall negotiate and promulgate regulations establishing the criteria according to which a tribal government may—

“(I) carry out the maximum permissible functions associated with the procurement or granting of rights-of-way for projects eligible for assistance under this title or chapter 53 of title 49 that the tribal government is performing pursuant to a contract, compact, or agreement under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) or paragraph (X); and

“(II) develop corridor management policies.

“(B) RIGHTS-OF-WAY FOR EXISTING ROUTES.—

“(i) IN GENERAL.—Not later than 120 days after the date of receipt of a request from a tribal government, the Secretary of the Interior shall provide to the tribal government documentation of each enforceable right-of-way for each route that, as of the date of enactment of this paragraph—

“(I) is eligible for inclusion in the national tribal transportation facility inventory under section 202(b); and

“(II) is owned by the Bureau of Indian Affairs or the tribal government.

“(ii) FAILURE TO LOCATE DOCUMENTATION.—

“If the Secretary of the Interior is unable to locate documentation of an enforceable right-of-way under clause (i):

“(I) the Secretary of the Interior shall notify the tribal government of its inability to locate enforceable right-of-way under clause (i) not later than 30 days after the receipt of the request under clause (i); and

“(II) the Secretary of the Interior shall, not later than 120 days of the receipt of the request under clause (i), in consultation with the tribal government and based on the tribal government’s transportation priorities, and with the tribe’s consent, develop a schedule and a plan for acquiring by purchase or otherwise, enforceable right-of-way for each eligible route; and

“(III) not later than one calendar year after the date of receipt of the request from the tribal government under clause (i), the Secretary of the Interior shall acquire, by purchase or otherwise, an enforceable right-of-way for each eligible route in accordance with the schedule and plan developed under clause (II).

“(iii) TRIBAL AUTHORITY TO ACQUIRE RIGHT-OF-WAY.—The tribal government that has requested documentation under clause (i) may, at its option, assume the responsibility of the Secretary of the Interior under clause (ii) to acquire right-of-way under its existing agreements issued in accordance with the Indian Self-Determination and Education Assistance Act (25 USC § 450 et seq.) (including Title VII of that Act) in which case:

“(I) the costs of acquiring such right-of-way shall be payable from funds authorized to carry out this paragraph; and

“(II) the tribal government shall not be subject to the time limits in clause (ii).

“(iv) LIMITATION.—In acquiring a right-of-way under clause (ii), the Secretary of the Interior shall not require a tribal government to use tribal funds or funds made available to the tribal government under this title or chapter 53 of title 49.”

“(C) RIGHT-OF-WAY RECORDS—

“(i) IN GENERAL.—Not later than 3 years after the date of enactment of this paragraph, the Secretary of the Interior shall complete a comprehensive national update of right-of-way records for all routes that are—

“(I) eligible for inclusion in the national tribal transportation facility inventory; and

“(II) owned by the Bureau of Indian Affairs or a tribal government.

“(ii) REQUIREMENTS.—In completing the update of records under clause (i), the Secretary shall—

“(I) computerize and organize all right-of-way records; and

“(II) establish a system for ensuring that documentation of a right-of-way for a new route owned by the Bureau of Indian Affairs or a tribal government is promptly added to the right-of-way records database.

“(iii) AVAILABILITY.—The Secretary shall make each updated record under this subparagraph available to the tribal government on the inventory of which the applicable route appears in any commonly used mapping format requested by the tribal government.

“(D) AUTHORIZATION OF APPROPRIATIONS.—There is

authorized to be appropriated from the Highway Trust Fund

(other than the Mass Transit Account) $10,000,000 for each of fiscal year 2015 through 2020 to carry out this paragraph.”

# SECTION 114. COMPLIANCE WITH ENVIRONMENTAL LAW.

1. Section 202, subsection (b), title 23, United States Code, is amended by adding at the end the following:

“(8) Compliance with environmental law.—A tribal government that has entered into a contract, compact, or agreement pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) or the Tribal Transportation Self-Governance Program, proposed herein as 23 U.S.C. § 207, to carry out a project under this subsection may elect to assume all Federal responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the National Historic Preservation Act (16 U.S.C. 470 et seq.), and any related provisions of law that would apply if the Secretary were to carry out the applicable construction project, by adopting a resolution that—

‘‘(A) designates a certifying officer—

‘‘(i) to represent the Indian tribe; and

‘‘(ii) to assume the status of a responsible Federal official under those laws; and

‘‘(B) accepts the jurisdiction of the United States courts for the purpose of enforcement of the responsibilities of a Federal official under those laws.”

# SECTION 115. TRIBAL INFRASTRUCTURE BANK.

1. Chapter 6 of title 23, United States Code, is amended by adding at the end thereof the following new section:

“§ 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 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.

“(c) FUNDING.—

“(1) SEPARATE ACCOUNTS.—

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

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

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

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

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

“(A) HIGHWAY ACCOUNT.—For the Highway Account

of the tribal infrastructure bank, out of the Highway Trust

Fund (other than the Mass Transit Account), $8,500,000 for each of fiscal years 2015 through 2020.

“(B) TRANSIT ACCOUNT.—For the Transit Account of the tribal infrastructure bank, out of the Mass Transit Account,

$1,500,000 for each of fiscal years 2015 through 2020.

“(3) CAPITAL GRANTS

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

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

“(d) FORMS OF ASSISTANCE.—

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

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

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

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

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

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

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

“(g) INFRASTRUCTURE BANK REQUIREMENTS. --The federally

chartered corporation shall—

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

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

“(A) credited to the account;

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

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

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

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

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

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

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

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

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

“(h) APPLICABILITY OF FEDERAL LAW.--

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

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

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

“(2) REPAYMENTS.—

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

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

“(i) UNITED STATES NOT OBLIGATED.—

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

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

# SECTION 116. TRIBAL TECHNICAL ASSISTANCE CENTERS.

(a) Amend section 202(a)(7) of title 23, United States Code, to read as follows:

“(7) TRIBAL TECHNICAL ASSISTANCE CENTERS.—The Secretary of the Interior shall reserve amounts from administrative funds of the Bureau of Indian Affairs that are associated with the tribal transportation program to fund tribal technical assistance centers under section 504(b).

1. Amend section 504(b)(3)(B) of title 23, United States Code, to read as follows:

“(B) Tribal technical assistance centers.-The Federal share of the cost of an activity carried out by a tribal technical center under paragraph (2)(D)(ii) shall be 100 percent; provided, however, that of the amounts reserved by the Secretary of the Interior from administrative funds of the Bureau of Indian Affairs associated with the tribal transportation program to fund tribal technical assistance centers under this section, the Secretary shall reserve not less than $3,600,000 for such purposes.”

# SECTION 117. EMERGENCY RELIEF FUNDING.

(a) Section 125(e)(2) of title 23, United States Code, is amended by adding at the end of the section the following:

“(2) Expenditure of funds.- Notwithstanding subjection (d)(1), the Secretary may expend funds from the emergency fund herein authorized by this section, independently or in cooperation with any other branch of the Federal Government, a State agency, a tribal government, an organization, or aperson, for the repair or reconstruction of tribal transportation facilities, Federal lands transportation facilities, and other federally owned roads that are open to public travel, whether or not those facilities are Federal-aid highways. Notwithstanding any other provision of law, regulations, policy or guideline, including threshold levels for determining eligibility for assistance under this section, tribal governments may submit applications for emergency relief funding for the repair or reconstruction of public transportation facilities which are owned or maintained by tribal governments or the Bureau of Indian Affairs directly to the Secretary of Transportation. The Secretary shall process tribal applications in the same manner as applications from federal agencies are processed. The Secretary shall develop criteria for tribal emergency relief funding applications, including appropriate eligibility thresholds under this subsection pursuant to regulations issued in accordance with section 202(b)(X).”

# SECTION 118. TRANSPORTATION ALTERNATIVES PROGRAM.

1. Subsection a(1) of Section 213 of title 23, United States Code is amended as follows: strike “2013 and 2014” and insert “2015 through 2020.”
2. Section 213 of title 23, United States Code is amended to insert a new section (b) to read:

“(b) Tribal projects. The Secretary shall set-aside from the funds apportioned to the States for transportation alternatives an amount not less than 3% for distribution to tribal governments under the formula established in section 202 of this title. Tribal Governments may utilize the funds for any eligible projects as defined in (c) below or at the tribes option may program these funds for other priority projects designated on their approved Transportation Improvement Program (TIP).”

1. Section 213 of title 23, United States Code is amended to reorder subsections (b) through (g) as (c) through (h).

# SECTION 119. NATIONAL BRIDGE INVENTORY.

1. Amend section 1111 of Pub. L. 112-141, amending section 144(j) of title 23, United States Code, to read as follows:
2. In subparagraph (j)(3), strike the subparagraph and insert in lieu thereof the following:

“(3) an Indian tribe, or at the request of the Indian tribe, the Secretary, may use funds made available to the Secretary under sections 104(a) and 503; and”

# TITLE II—TRIBAL SELF GOVERNANCE

# SECTION 201. TRIBAL TRANSPORTATION SELF-GOVERNANCE PROGRAM.

# chapter 2 of Title 23 United States Code is amended by inserting after section 206 the following:

**“§ 207. Tribal transportation self-governance program**

“(a) Establishment.—Subject to the requirements of this section, the Secretary shall establish and carry out a program to be known as the tribal transportation self-governance program. The Secretary may delegate responsibilities for administration of the program as the Secretary determines appropriate.

“(b) Eligibility.—

“(1) In General.—An Indian tribe shall be eligible to participate in the program if the Indian tribe—

“(A) requests participation in the program by resolution or other official action by the governing body of the Indian tribe; and

“(B) demonstrates, for the preceding 3 fiscal years, financial stability and financial management capability.

“(2) Criteria For Determining Financial Stability And Financial Management Capacity.—For the purposes of paragraph (1)(B), evidence that, during the preceding 3 fiscal years, an Indian tribe had no uncorrected significant and material audit exceptions in the required annual audit of the Indian tribe’s self-determination contracts or self-governance funding agreements with any Federal agency shall be conclusive evidence of the required stability and capability.

“(c) Compacts.—

“(1) Compact Required.—Upon the request of an eligible Indian tribe, and subject to the requirements of this section, the Secretary shall negotiate and enter into a written compact with the Indian tribe for the purpose of providing for the participation of the Indian tribe in the program.

“(2) Contents.—A compact entered into under paragraph (1) shall set forth the general terms of the government-to-government relationship between the Indian tribe and the United States under the program and other terms that will continue to apply in future fiscal years.

“(3) Amendments.—A compact entered into with an Indian tribe under paragraph (1) may be amended only by mutual agreement of the Indian tribe and the Secretary.

“(d) Annual Funding Agreements.—

“(1) Funding Agreement Required.—After entering into a compact with an Indian tribe under subsection (c), the Secretary shall negotiate and enter into a written annual funding agreement with the Indian tribe.

“(2) Contents.—

“(A) In General.—

“(i) Discretionary And Competitive Grants.—A funding agreement entered into with an Indian tribe shall authorize the Indian tribe, as determined by the Indian tribe, to plan, conduct, consolidate, administer, and receive full tribal share funding and funding to tribes from discretionary and competitive grants administered by the Department for all programs, services, functions, and activities (or portions thereof) that are made available to Indian tribes to carry out tribal transportation programs and programs, services, functions, and activities (or portions thereof) administered by the Secretary that are otherwise available to Indian tribes.

“(ii) Cooperation With States.—

“(I) Inclusion Of Transferred Funds In Funding Agreement.—A funding agreement entered into with an Indian tribe shall include Federal-aid funds apportioned to a State under chapter 1 if the State elects to provide a portion of such funds to the Indian tribe for a project eligible under section 202(b).

“(II) Method For Transfers.—If a State elects to provide funds described in subclause (I) to an Indian tribe, the State shall either—

“(aa) transfer the funds back to the Secretary and the Secretary shall transfer the funds to the Indian tribe in accordance with this section; or

“(bb) transfer the funds directly to the Indian tribe

“(III) Responsibility For Transferred Funds.—Notwithstanding any other provision of law, if a State provides funds described in subclause (I) to an Indian tribe—

“(aa) the State shall not be responsible for constructing or maintaining a project carried out using the funds or for administering or supervising the project or funds during the applicable statute of limitations period related to the construction of the project; and

“(bb) the Indian tribe shall be responsible for constructing and maintaining a project carried out using the funds and for administering and supervising the project and funds in accordance with this section during the applicable statute of limitations period related to the construction of the project.

“(IV) Interaction with Other Sections.—

Nothing in this Section is meant to limit the authority of any State to transfer funds to any Tribe under Section 202 of title 23, United States Code or any other provision of law.

“(B) Administration Of Tribal Shares.—The tribal shares referred to in subparagraph (A) shall be provided without regard to the agency or office of the Department within which the program, service, function, or activity (or portion thereof) is performed.

“(C) Flexible And Innovative Financing.—

“(i) In General.—A funding agreement entered into with an Indian tribe under paragraph (1) shall include provisions pertaining to flexible and innovative financing if agreed upon by the parties.

“(ii) Terms And Conditions.—

“(I) Authority To Issue Regulations.—The Secretary may issue regulations to establish the terms and conditions relating to the flexible and innovative financing provisions referred to in clause (i).

“(II) Terms And Conditions In Absence Of Regulations.—If the Secretary does not issue regulations under subclause (I), the terms and conditions relating to the flexible and innovative financing provisions referred to in clause (i) shall be consistent with—

“(aa) agreements entered into by the Department under section 202(c)(8) before the date of enactment of the American Energy and Infrastructure Jobs Act of 2012; or

“(bb) regulations of the Department of the Interior relating to flexible financing contained in part 170 of title 25, Code of Federal Regulations, as in effect on the date of enactment of such Act.

“(3) Discretionary And Competitive Grants.—Notwithstanding any other provision of law, an Indian tribe shall be eligible to directly apply for and receive the discretionary and competitive grants made available under transportation programs that States or political subdivisions of States are eligible to apply for and receive.

“(4) Terms.—A funding agreement shall set forth—

“(A) terms that generally identify the programs, services, functions, and activities (or portions thereof) to be performed or administered by the Indian tribe; and

“(B) for items identified in subparagraph (A)—

“(i) the general budget category assigned;

“(ii) the funds to be provided, including those funds to be provided on a recurring basis;

“(iii) the time and method of transfer of the funds;

“(iv) the responsibilities of the Secretary and the Indian tribe; and

“(v) any other provision agreed to by the Indian tribe and the Secretary.

“(5) Subsequent Funding Agreements.—

“(A) Applicability Of Existing Agreement.—Absent notification from an Indian tribe that the Indian tribe is withdrawing from or retroceding the operation of one or more programs, services, functions, or activities (or portions thereof) identified in a funding agreement, or unless otherwise agreed to by the parties, each funding agreement shall remain in full force and effect until a subsequent funding agreement is executed.

“(B) Effective Date Of Subsequent Agreement.—The terms of the subsequent funding agreement shall be retroactive to the end of the term of the preceding funding agreement.

“(6) Consent Of Indian Tribe Required.—The Secretary shall not revise, amend, or require additional terms in a new or subsequent funding agreement without the consent of the Indian tribe that is subject to the agreement unless such terms are required by Federal law.

“(e) General Provisions.—

“(1) Redesign And Consolidation.—

“(A) In General.—An Indian tribe, in any manner that the Indian tribe considers to be in the best interest of the Indian community being served, may—

“(i) redesign or consolidate programs, services, functions, and activities (or portions thereof) included in a funding agreement; and

“(ii) reallocate or redirect funds for such programs, services, functions, and activities (or portions thereof), if the funds are—

“(I) expended on projects identified in a transportation improvement program approved by the Secretary; and

“(II) used in accordance with appropriations Acts and other applicable statutory limitations.

“(B) Exception.—Notwithstanding subparagraph (A), if, pursuant to subsection (d), an Indian tribe receives a discretionary or competitive grant from the Secretary or receives State apportioned funds, the Indian tribe shall use the funds for the purpose for which the funds were originally authorized.

“(2) Retrocession.—

“(A) In General.—

“(i) Authority Of Indian Tribes.—An Indian tribe may retrocede (fully or partially) to the Secretary programs, services, functions, or activities (or portions thereof) included in a compact or funding agreement.

“(ii) Reassumption Of Remaining Funds.—Following a retrocession described in clause (i), the Secretary may—

“(I) reassume the remaining funding associated with the retroceded programs, functions, services, and activities (or portions thereof) included in the applicable compact or funding agreement;

“(II) out of such remaining funds, transfer funds associated with Department of Interior programs, services, functions, or activities (or portions thereof) to the Secretary of the Interior to carry out transportation services provided by the Secretary of the Interior; and

“(III) distribute funds not transferred under subclause (II) in accordance with applicable law.

“(iii) Correction Of Programs.—If the Secretary makes a finding under subsection (f)(2)(B) and no funds are available under subsection (f)(2)(A)(ii), the Secretary shall not be required to provide additional funds to complete or correct any programs, functions, or activities (or portions thereof).

“(B) Effective Date.—Unless the Indian tribe rescinds a request for retrocession, the retrocession shall become effective within the timeframe specified by the parties in the compact or funding agreement. In the absence of such a specification, the retrocession shall become effective on—

“(i) the earlier of—

“(I) 1 year after the date of submission of the request; or

“(II) the date on which the funding agreement expires; or

“(ii) such date as may be mutually agreed upon by the parties and, with respect to Department of the Interior programs, functions, services, and activities (or portions thereof), the Secretary of the Interior.

“(f) Provisions Relating To The Secretary.—

“(1) Decisionmaker.—A decision that constitutes a final agency action and relates to an appeal of the rejection of a final offer by the Department shall be made either—

“(A) by an official of the Department who holds a position at a higher organizational level within the Department than the level of the departmental agency in which the decision that is the subject of the appeal was made; or

“(B) by an administrative judge.

“(2) Termination Of Compact Or Funding Agreement.—

“(A) Authority To Terminate.—

“(i) Provision To Be Included In Compact Or Funding Agreement.—A compact or funding agreement shall include a provision authorizing the Secretary, if the Secretary makes a finding described in subparagraph (B), to—

“(I) terminate the compact or funding agreement (or a portion thereof); and

“(II) reassume the remaining funding associated with the reassumed programs, functions, services, and activities included in the compact or funding agreement.

“(ii) Transfers Of Funds.—Out of any funds reassumed under clause (i)(II), the Secretary may transfer the funds associated with Department of the Interior programs, functions, services, and activities (or portions thereof) to the Secretary of the Interior to provide continued transportation services in accordance with applicable law.

“(B) Findings Resulting In Termination.—The finding referred to in subparagraph (A) is a specific finding of—

“(i) imminent jeopardy to a trust asset, natural resources, or public health and safety that is caused by an act or omission of the Indian tribe and that arises out of a failure to carry out the compact or funding agreement, as determined by the Secretary; or

“(ii) gross mismanagement with respect to funds or programs transferred to the Indian tribe under the compact or funding agreement, as determined by the Secretary in consultation with the Inspector General of the Department, as appropriate.

“(C) Prohibition.—The Secretary shall not terminate a compact or funding agreement (or portion thereof) unless—

“(i) the Secretary has first provided written notice and a hearing on the record to the Indian tribe that is subject to the compact or funding agreement; and

“(ii) the Indian tribe has not taken corrective action to remedy the mismanagement of funds or programs or the imminent jeopardy to a trust asset, natural resource, or public health and safety.

“(D) Exception.—

“(i) In General.—Notwithstanding subparagraph (C), the Secretary, upon written notification to an Indian tribe that is subject to a compact or funding agreement, may immediately terminate the compact or funding agreement (or portion thereof) if—

“(I) the Secretary makes a finding of imminent substantial and irreparable jeopardy to a trust asset, natural resource, or public health and safety; and

“(II) the jeopardy arises out of a failure to carry out the compact or funding agreement.

“(ii) Hearings.—If the Secretary terminates a compact or funding agreement (or portion thereof) under clause (i), the Secretary shall provide the Indian tribe subject to the compact or agreement with a hearing on the record not later than 10 days after the date of such termination.

“(E) Burden Of Proof.—In any hearing or appeal involving a decision to terminate a compact or funding agreement (or portion thereof) under this paragraph, the Secretary shall have the burden of proof in demonstrating by clear and convincing evidence the validity of the grounds for the termination.

“(g) Cost Principles.—In administering funds received under this section, an Indian tribe shall apply cost principles under the applicable Office of Management and Budget circular, except as modified by section 106 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j–1), other provisions of law, or by any exemptions to applicable Office of Management and Budget circulars subsequently granted by the Office of Management and Budget. No other audit or accounting standards shall be required by the Secretary. Any claim by the Federal Government against the Indian tribe relating to funds received under a funding agreement based on any audit conducted pursuant to this subsection shall be subject to the provisions of section 106(f) of such Act (25 U.S.C. 450j–1(f)).

“(h) Transfer Of Funds.—The Secretary shall provide funds to an Indian tribe under a funding agreement in an amount equal to—

“(1) the sum of the funding that the Indian tribe would otherwise receive for the program, function, service, or activity in accordance with a funding formula or other allocation method established under this title or chapter 53 of title 49; and

“(2) such additional amounts as the Secretary determines equal the amounts that would have been withheld for the costs of the Bureau of Indian Affairs for administration of the program or project.

“(i) Construction Programs.—

“(1) Standards.—Construction projects carried out under programs administered by an Indian tribe with funds transferred to the Indian tribe pursuant to a funding agreement entered into under this section shall be constructed pursuant to the construction program standards set forth in applicable regulations or as specifically approved by the Secretary (or the Secretary’s designee).

“(2) Monitoring.—Construction programs shall be monitored by the Secretary in accordance with applicable regulations.

“(j) Facilitation.—

“(1) Secretarial Interpretation.—Except as otherwise provided by law, the Secretary shall interpret all Federal laws, Executive orders, and regulations in a manner that will facilitate—

“(A) the inclusion of programs, services, functions, and activities (or portions thereof) and funds associated therewith, in compacts and funding agreements; and

“(B) the implementation of the compacts and funding agreements.

“(2) Regulation Waiver.—

“(A) In General.—An Indian tribe may submit to the Secretary a written request to waive application of a regulation promulgated under this section with respect to a compact or funding agreement. The request shall identify the regulation sought to be waived and the basis for the request.

“(B) Approvals And Denials.—

“(i) In General.—Not later than 90 days after the date of receipt of a written request under subparagraph (A), the Secretary shall approve or deny the request in writing.

“(ii) Denials.—The Secretary may deny a request under clause (i) only if the Secretary finds that the identified language in the regulation may not be waived because the waiver is prohibited by Federal law.

“(iii) Deemed Approval.—If the Secretary does not approve or deny a request submitted under subparagraph (A) on or before the last day of the 90-day period referred to in clause (i), the request shall be deemed approved.

“(iv) Finality Of Decisions.—A decision by the Secretary under this subparagraph shall be final for the Department.

“(k) Disclaimers.—

“(1) Existing Authority.—Notwithstanding any other provision of law, upon the election of an Indian tribe, the Secretary shall—

“(A) maintain current Federal Highway Administration Indian reservation roads program and funding agreements; or

“(B) enter into new agreements under the authority of section 202(c)(8).

“(2) Limitation On Statutory Construction.—Nothing in this section may be construed to impair or diminish the authority of the Secretary under section 202(c)(8).

“(l) Applicability Of Indian Self-Determination And Education Assistance Act.—Except to the extent in conflict with this section (as determined by the Secretary), the following provisions of the Indian Self-Determination and Education Assistance Act shall apply to compact and funding agreements (except that references to the Secretary of the Interior in such provisions shall treated as a references to the Secretary of Transportation):

“(1) Subsections (a), (b), (d), (g), and (h) of section 506 of such Act (25 U.S.C. 458aaa–5), relating to general provisions.

“(2) Subsections (b) through (e) and (g) of section 507 of such Act (25 U.S.C.458aaa–6), relating to provisions relating to the Secretary of Health and Human Services.

“(3) Subsections (a), (b), (d), (e), (g), (h), (i), and (k) of section 508 of such Act (25 U.S.C. 458aaa–7), relating to transfer of funds.

“(4) Section 510 of such Act (25 U.S.C. 458aaa–9), relating to Federal procurement laws and regulations.

“(5) Section 511 of such Act (25 U.S.C. 458aaa–10), relating to civil actions.

“(6) Subsections (a)(1), (a)(2), and (c) through (f) of section 512 of such Act (25 U.S.C. 458aaa–11), relating to facilitation, except that subsection (c)(1) of that section shall be applied by substituting ‘transportation facilities and other facilities’ for ‘school buildings, hospitals, and other facilities’.

“(7) Subsections (a) and (b) of section 515 of such Act (25 U.S.C. 458aaa–14), relating to disclaimers.

“(8) Subsections (a) and (b) of section 516 of such Act (25 U.S.C. 458aaa–15), relating to application of title I provisions.

“(9) Section 518 of such Act (25 U.S.C. 458aaa–17), relating to appeals.

“(m) Definitions.—

“(1) In General.—In this section, the following definitions apply (except as otherwise expressly provided):

“(A) Compact.—The term ‘compact’ means a compact between the Secretary and an Indian tribe entered into under subsection (c).

“(B) Department.—The term ‘Department’ means the Department of Transportation.

“(C) Eligible Indian Tribe.—The term ‘eligible Indian tribe’ means an Indian tribe that is eligible to participate in the program, as determined under subsection (b).

“(D) Funding Agreement.—The term ‘funding agreement’ means a funding agreement between the Secretary and an Indian tribe entered into under subsection (d).

“(E) Indian Tribe.—The term ‘Indian tribe’ means any Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe under the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a). In any case in which an Indian tribe has authorized another Indian tribe, an inter-tribal consortium, or a tribal organization to plan for or carry out programs, services, functions, or activities (or portions thereof) on its behalf under this part, the authorized Indian tribe, inter-tribal consortium, or tribal organization shall have the rights and responsibilities of the authorizing Indian tribe (except as otherwise provided in the authorizing resolution or in this title). In such event, the term ‘Indian tribe’ as used in this part shall include such other authorized Indian tribe, inter-tribal consortium, or tribal organization.

“(F) Program.—The term ‘program’ means the tribal transportation self-governance program established under this section.

“(G) Secretary.—The term ‘Secretary’ means the Secretary of Transportation.

“(H) Transportation Programs.—The term ‘transportation programs’ means all programs administered or financed by the Department under this title and chapter 53 of title 49.

“(2) Applicability Of Other Definitions.—In this section, the definitions set forth in sections 4 and 505 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b; 458aaa) apply, except as otherwise expressly provided in this section.

“(n) Regulations.—

“(1) In General.—

“(A) Promulgation.—Not later than 90 days after the date of enactment of the American Energy and Infrastructure Jobs Act of 2012, the Secretary shall initiate procedures under subchapter III of chapter 5 of title 5 to negotiate and promulgate such regulations as are necessary to carry out this section.

“(B) Publication Of Proposed Regulations.—Proposed regulations to implement this section shall be published in the Federal Register by the Secretary not later than 21 months after such date of enactment.

“(C) Expiration Of Authority.—The authority to promulgate regulations under this paragraph shall expire 30 months after such date of enactment.

“(D) Extension Of Deadlines.—A deadline set forth in subparagraph (B) or (C) may be extended up to 180 days if the negotiated rulemaking committee referred to in paragraph (2) concludes that the committee cannot meet the deadline and the Secretary so notifies the appropriate committees of Congress.

“(2) Committee.—

“(A) In General.—A negotiated rulemaking committee established pursuant to section 565 of title 5 to carry out this subsection shall have as its members only Federal and tribal government representatives, a majority of whom shall be nominated by and be representatives of Indian tribes with funding agreements under this title.

“(B) Requirements.—The committee shall confer with, and accommodate participation by, representatives of Indian tribes, inter-tribal consortia, tribal organizations, and individual tribal members.

“(C) Adaptation Of Procedures.—The Secretary shall adapt the negotiated rulemaking procedures to the unique context of self-governance and the government-to-government relationship between the United States and Indian tribes.

“(3) Effect.—The lack of promulgated regulations shall not limit the effect of this section.

“(4) Effect Of Circulars, Policies, Manuals, Guidance, And Rules.—Unless expressly agreed to by the participating Indian tribe in the compact or funding agreement, the participating Indian tribe shall not be subject to any agency circular, policy, manual, guidance, or rule adopted by the Department of Transportation, except regulations promulgated under this section.”.

1. CLERICAL AMENDMENT.-The analysis for such chapter is amended by inserting after the item relating to section 206 the following:

“207. Tribal transportation self-governance program.”