

**AMENDMENT TO THE RULES COMMITTEE PRINT
OF H.R. 7
OFFERED BY MR. COLE OF OKLAHOMA**

Page 167, strike line 15 and all that follows through
line 16 on page 196 and insert the following:

1 **“§ 201. Federal lands and tribal transportation pro-**
2 **grams**

3 “(a) PURPOSE.—Recognizing the need for all public
4 Federal and tribal transportation facilities to be treated
5 under uniform policies similar to the policies that apply
6 to Federal-aid highways and other public transportation
7 facilities, the Secretary of Transportation, in collaboration
8 with the Secretaries of the appropriate Federal land man-
9 agement agencies, shall coordinate a uniform policy for all
10 public Federal and tribal transportation facilities that
11 shall apply to Federal lands transportation facilities, tribal
12 transportation facilities, and Federal lands access trans-
13 portation facilities.

14 “(b) AVAILABILITY OF FUNDS.—

15 “(1) AVAILABILITY.—Funds authorized for the
16 tribal transportation program, the Federal lands
17 transportation program, and the Federal lands ac-
18 cess program shall be available for contract upon ap-

1 portionment, or on October 1 of the fiscal year for
2 which the funds were authorized if no apportionment
3 is required.

4 “(2) AMOUNT REMAINING.—Any amount re-
5 maining unexpended for a period of 3 years after the
6 close of the fiscal year for which the funds were au-
7 thorized shall lapse.

8 “(3) OBLIGATIONS.—The Secretary of the de-
9 partment responsible for the administration of funds
10 under this subsection may incur obligations, approve
11 projects, and enter into contracts under such author-
12 izations, which shall be considered to be contractual
13 obligations of the United States for the payment of
14 the cost thereof, the funds of which shall be consid-
15 ered to have been expended when obligated.

16 “(4) EXPENDITURE.—

17 “(A) IN GENERAL.—Any funds authorized
18 for any fiscal year after the date of enactment
19 of this section under the Federal lands trans-
20 portation program, the Federal lands access
21 program, and the tribal transportation program
22 shall be considered to have been expended if a
23 sum equal to the total of the sums authorized
24 for the fiscal year and previous fiscal years have
25 been obligated.

1 “(B) CREDITED FUNDS.—Any funds de-
2 scribed in subparagraph (A) that are released
3 by payment of final voucher or modification of
4 project authorizations shall be—

5 “(i) credited to the balance of unobli-
6 gated authorizations; and

7 “(ii) immediately available for expend-
8 iture.

9 “(5) APPLICABILITY.—This section shall not
10 apply to funds authorized before the date of enact-
11 ment of this paragraph.

12 “(6) CONTRACTUAL OBLIGATION.—

13 “(A) IN GENERAL.—Notwithstanding any
14 other provision of law (including regulations),
15 the authorization by the Secretary, or the Sec-
16 retary of the appropriate Federal land manage-
17 ment agency if the agency is the contracting of-
18 fice, of engineering and related work for the de-
19 velopment, design, and acquisition associated
20 with a construction project, whether performed
21 by contract or agreement authorized by law, or
22 the approval by the Secretary of plans, speci-
23 fications, and estimates for construction of a
24 project, shall be considered to constitute a con-

1 tractual obligation of the Federal Government
2 to pay the total eligible cost of—

3 “(i) any project funded under this
4 title; and

5 “(ii) any project funded pursuant to
6 agreements authorized by this title or any
7 other title.

8 “(B) EFFECT.—Nothing in this para-
9 graph—

10 “(i) affects the application of the Fed-
11 eral share associated with the project being
12 undertaken under this section; or

13 “(ii) modifies the point of obligation
14 associated with Federal salaries and ex-
15 penses.

16 “(7) FEDERAL SHARE.—

17 “(A) TRIBAL AND FEDERAL LANDS TRANS-
18 PORTATION PROGRAM.—The Federal share of
19 the cost of a project carried out under the Fed-
20 eral lands transportation program or the tribal
21 transportation program shall be 100 percent.

22 “(B) FEDERAL LANDS ACCESS PRO-
23 GRAM.—The Federal share of the cost of a
24 project carried out under the Federal lands ac-

1 cess program shall be determined in accordance
2 with section 120.

3 “(c) TRANSPORTATION PLANNING.—

4 “(1) TRANSPORTATION PLANNING PROCE-
5 DURES.—In consultation with the Secretary of each
6 appropriate Federal land management agency, the
7 Secretary shall implement transportation planning
8 procedures for Federal lands and tribal transpor-
9 tation facilities that are consistent with the planning
10 processes required under sections 134 and 135.

11 “(2) APPROVAL OF TRANSPORTATION IMPROVE-
12 MENT PROGRAM.—The transportation improvement
13 program developed as a part of the transportation
14 planning process under this section shall be ap-
15 proved by the Secretary.

16 “(3) INCLUSION IN OTHER PLANS.—Each re-
17 gionally significant tribal transportation program,
18 Federal lands transportation program, and Federal
19 lands access program project shall be—

20 “(A) developed in cooperation with State
21 and metropolitan planning organizations; and

22 “(B) included in appropriate tribal trans-
23 portation program plans, Federal lands trans-
24 portation program plans, Federal lands access

1 program plans, State and metropolitan plans,
2 and transportation improvement programs.

3 “(4) INCLUSION IN STATE PROGRAMS.—The ap-
4 proved tribal transportation program, Federal lands
5 transportation program, and Federal lands access
6 program transportation improvement programs shall
7 be included in appropriate State and metropolitan
8 planning organization plans and programs without
9 further action on the transportation improvement
10 program.

11 “(5) ASSET MANAGEMENT.—The Secretary and
12 the Secretary of each appropriate Federal land man-
13 agement agency shall, to the extent appropriate, im-
14 plement safety, bridge, pavement, and congestion
15 management systems for facilities funded under the
16 tribal transportation program and the Federal lands
17 transportation program in support of asset manage-
18 ment.

19 “(6) DATA COLLECTION.—

20 “(A) DATA COLLECTION.—The Secretaries
21 of the appropriate Federal land management
22 agencies shall collect and report data necessary
23 to implement the Federal lands transportation
24 program, the Federal lands access program,

1 and the tribal transportation program, includ-
2 ing—

3 “(i) inventory and condition informa-
4 tion on Federal lands transportation facili-
5 ties and tribal transportation facilities; and

6 “(ii) bridge inspection and inventory
7 information on any Federal bridge open to
8 the public.

9 “(B) STANDARDS.—The Secretary, in co-
10 ordination with the Secretaries of the appro-
11 priate Federal land management agencies, shall
12 define the collection and reporting data stand-
13 ards.

14 “(7) ADMINISTRATIVE EXPENSES.—To imple-
15 ment the activities described in this subsection, in-
16 cluding direct support of transportation planning ac-
17 tivities among Federal land management agencies,
18 the Secretary may use not more than 5 percent for
19 each fiscal year of the funds authorized for pro-
20 grams under sections 203 and 204.

21 “(d) REIMBURSABLE AGREEMENTS.—In carrying out
22 work under reimbursable agreements with any State, local,
23 or tribal government under this title, the Secretary—

1 “(1) may, without regard to any other provision
2 of law (including regulations), record obligations
3 against accounts receivable from the entity; and

4 “(2) shall credit amounts received from the en-
5 tity to the appropriate account, which shall occur
6 not later than 90 days after the date of the original
7 request by the Secretary for payment.

8 “(e) TRANSFERS.—

9 “(1) IN GENERAL.—To enable the efficient use
10 of funds made available for the Federal lands trans-
11 portation program and the Federal lands access pro-
12 gram, the funds may be transferred by the Secretary
13 within and between each program with the concur-
14 rence of, as appropriate—

15 “(A) the Secretary;

16 “(B) the affected Secretaries of the respec-
17 tive Federal land management agencies;

18 “(C) State departments of transportation;

19 and

20 “(D) local government agencies.

21 “(2) CREDIT.—The funds described in para-
22 graph (1) shall be credited back to the loaning entity
23 with funds that are currently available for obligation
24 at the time of the credit.

1 **“§ 202. Tribal transportation program**

2 “(a) USE OF FUNDS.—

3 “(1) IN GENERAL.—Funds made available
4 under the tribal transportation program shall be
5 used by the Secretary of Transportation and the
6 Secretary of the Interior to pay the costs of—

7 “(A)(i) transportation planning, research,
8 maintenance, engineering, rehabilitation, res-
9 toration, construction, and reconstruction of
10 tribal transportation facilities;

11 “(ii) adjacent vehicular parking areas;

12 “(iii) interpretive signage;

13 “(iv) acquisition of necessary scenic ease-
14 ments and scenic or historic sites;

15 “(v) provisions for pedestrians and bicy-
16 cles;

17 “(vi) environmental mitigation in or adja-
18 cent to tribal land—

19 “(I) to improve public safety and re-
20 duce vehicle-caused wildlife mortality while
21 maintaining habitat connectivity; and

22 “(II) to mitigate the damage to wild-
23 life, aquatic organism passage, habitat,
24 and ecosystem connectivity, including the
25 costs of constructing, maintaining, replac-

1 ing, or removing culverts and bridges, as
2 appropriate;

3 “(vii) construction and reconstruction of
4 roadside rest areas, including sanitary and
5 water facilities; and

6 “(viii) other appropriate public road facili-
7 ties as determined by the Secretary;

8 “(B) operation and maintenance of transit
9 programs and facilities that are located on, or
10 provide access to, tribal land, or are adminis-
11 tered by a tribal government; and

12 “(C) any transportation project eligible for
13 assistance under this title that is located within,
14 or that provides access to, tribal land, or is as-
15 sociated with a tribal government.

16 “(2) CONTRACT.—In connection with an activ-
17 ity described in paragraph (1), the Secretary and the
18 Secretary of the Interior may enter into a contract
19 or other appropriate agreement with respect to the
20 activity with—

21 “(A) a State (including a political subdivi-
22 sion of a State); or

23 “(B) an Indian tribe.

24 “(3) INDIAN LABOR.—Indian labor may be em-
25 ployed, in accordance with such rules and regula-

1 tions as may be promulgated by the Secretary of the
2 Interior, to carry out any construction or other ac-
3 tivity described in paragraph (1).

4 “(4) FEDERAL EMPLOYMENT.—No maximum
5 limitation on Federal employment shall be applicable
6 to the construction or improvement of tribal trans-
7 portation facilities.

8 “(5) FUNDS FOR CONSTRUCTION AND IMPROVE-
9 MENT.—All funds made available for the construc-
10 tion and improvement of tribal transportation facili-
11 ties shall be administered in conformity with regula-
12 tions and agreements jointly approved by the Sec-
13 retary and the Secretary of the Interior.

14 “(6) ADMINISTRATIVE EXPENSES.—

15 “(A) IN GENERAL.—Of the funds author-
16 ized to be appropriated for the tribal transpor-
17 tation program, not more than 6 percent may
18 be used by the Secretary or the Secretary of the
19 Interior for program management and oversight
20 and project-related administrative expenses.

21 “(B) RESERVATION OF FUNDS.—The Sec-
22 retary of the Interior may reserve amounts
23 from administrative funds of the Bureau of In-
24 dian Affairs that are associated with the tribal

1 transportation program to fund tribal technical
2 assistance centers under section 504(b).

3 “(7) MAINTENANCE.—

4 “(A) USE OF FUNDS.—Notwithstanding
5 any other provision of this title, of the amount
6 of funds allocated to an Indian tribe from the
7 tribal transportation program, for the purpose
8 of maintenance (excluding road sealing, which
9 shall not be subject to any limitation), the Sec-
10 retary shall not use an amount more than the
11 greater of—

12 “(i) an amount equal to 25 percent;

13 or

14 “(ii) \$500,000.

15 “(B) RESPONSIBILITY OF BUREAU OF IN-
16 DIAN AFFAIRS AND SECRETARY OF THE INTE-
17 RIOR.—

18 “(i) BUREAU OF INDIAN AFFAIRS.—

19 The Bureau of Indian Affairs shall retain
20 primary responsibility, including annual
21 funding request responsibility, for Bureau
22 of Indian Affairs road maintenance pro-
23 grams on Indian reservations.

24 “(ii) SECRETARY OF THE INTERIOR.—

25 The Secretary of the Interior shall ensure

1 that funding made available under this
2 subsection for maintenance of tribal trans-
3 portation facilities for each fiscal year is
4 supplementary to, and not in lieu of, any
5 obligation of funds by the Bureau of In-
6 dian Affairs for road maintenance pro-
7 grams on Indian reservations.

8 “(C) TRIBAL-STATE ROAD MAINTENANCE
9 AGREEMENTS.—

10 “(i) IN GENERAL.—An Indian tribe
11 and a State may enter into a road mainte-
12 nance agreement under which an Indian
13 tribe shall assume the responsibility of the
14 State for—

15 “(I) tribal transportation facili-
16 ties; and

17 “(II) roads providing access to
18 tribal transportation facilities.

19 “(ii) REQUIREMENTS.—Agreements
20 entered into under clause (i) shall—

21 “(I) be negotiated between the
22 State and the Indian tribe; and

23 “(II) not require the approval of
24 the Secretary.

25 “(8) COOPERATION.—

1 “(A) IN GENERAL.—The cooperation of
2 States, counties, or other local subdivisions may
3 be accepted in construction and improvement.

4 “(B) FUNDS RECEIVED.—Any funds re-
5 ceived from a State, county, or local subdivision
6 shall be credited to appropriations available for
7 the tribal transportation program.

8 “(9) COMPETITIVE BIDDING.—

9 “(A) CONSTRUCTION.—

10 “(i) IN GENERAL.—Subject to clause
11 (ii) and subparagraph (B), construction of
12 each project shall be performed by contract
13 awarded by competitive bidding.

14 “(ii) EXCEPTION.—Clause (i) shall
15 not apply if the Secretary or the Secretary
16 of the Interior affirmatively finds that,
17 under the circumstances relating to the
18 project, a different method is in the public
19 interest.

20 “(B) APPLICABILITY.—Notwithstanding
21 subparagraph (A), section 23 of the Act of
22 June 25, 1910 (25 U.S.C. 47) and section 7(b)
23 of the Indian Self-Determination and Education
24 Assistance Act (25 U.S.C. 450e(b)) shall apply
25 to all funds administered by the Secretary of

1 the Interior that are appropriated for the con-
2 struction and improvement of tribal transpor-
3 tation facilities.

4 “(b) FUNDS DISTRIBUTION.—

5 “(1) NATIONAL TRIBAL TRANSPORTATION FA-
6 CILITY INVENTORY.—

7 “(A) IN GENERAL.—The Secretary of the
8 Interior, in cooperation with the Secretary, shall
9 maintain a comprehensive national inventory of
10 tribal transportation facilities that are eligible
11 for assistance under the tribal transportation
12 program.

13 “(B) TRANSPORTATION FACILITIES IN-
14 CLUDED IN THE INVENTORY.—For purposes of
15 identifying the tribal transportation system and
16 determining the relative transportation needs
17 among Indian tribes, the Secretary shall in-
18 clude, at a minimum, transportation facilities
19 that are eligible for assistance under the tribal
20 transportation program that an Indian tribe
21 has requested, including facilities that—

22 “(i) were included in the Bureau of
23 Indian Affairs system inventory prior to
24 October 1, 2004;

1 “(ii) are owned by an Indian tribal
2 government;

3 “(iii) are owned by the Bureau of In-
4 dian Affairs;

5 “(iv) were constructed or recon-
6 structed with funds from the Highway Ac-
7 count of the Transportation Trust Fund
8 under the Indian reservation roads pro-
9 gram since 1983;

10 “(v) are public roads or bridges within
11 the exterior boundary of Indian reserva-
12 tions, Alaska Native villages, and other
13 recognized Indian communities (including
14 communities in former Indian reservations
15 in the State of Oklahoma) in which the
16 majority of residents are American Indians
17 or Alaska Natives;

18 “(vi) are public roads within or pro-
19 viding access to an Indian reservation or
20 Indian trust land or restricted Indian land
21 that is not subject to fee title alienation
22 without the approval of the Federal Gov-
23 ernment, or Indian or Alaska Native vil-
24 lages, groups, or communities in which In-
25 dians and Alaska Natives reside, whom the

1 Secretary of the Interior has determined
2 are eligible for services generally available
3 to Indians under Federal laws specifically
4 applicable to Indians; or

5 “(vii) are primary access routes pro-
6 posed by tribal governments, including
7 roads between villages, roads to landfills,
8 roads to drinking water sources, roads to
9 natural resources identified for economic
10 development, and roads that provide access
11 to intermodal terminals, such as airports,
12 harbors, or boat landings.

13 “(C) LIMITATION ON PRIMARY ACCESS
14 ROUTES.—For purposes of this paragraph, a
15 proposed primary access route is the shortest
16 practicable route connecting 2 points of the pro-
17 posed route.

18 “(D) ADDITIONAL FACILITIES.—Nothing
19 in this paragraph precludes the Secretary from
20 including additional transportation facilities
21 that are eligible for funding under the tribal
22 transportation program in the inventory used
23 for the national funding allocation if such addi-
24 tional facilities are included in the inventory in
25 a uniform and consistent manner nationally.

1 “(E) BRIDGES.—All bridges in the inven-
2 tory shall be recorded in the national bridge in-
3 ventory administered by the Secretary under
4 section 144.

5 “(2) REGULATIONS.—Notwithstanding sections
6 563(a) and 565(a) of title 5, the Secretary of the In-
7 terior shall maintain any regulations governing the
8 tribal transportation program.

9 “(3) BASIS FOR FUNDING FORMULA.—

10 “(A) BASIS.—

11 “(i) IN GENERAL.—After making the
12 set asides authorized under subsections
13 (a)(6), (c), (d), and (e) on October 1 of
14 each fiscal year, the Secretary shall dis-
15 tribute the remainder authorized to be ap-
16 propriated for the tribal transportation
17 program under this section among Indian
18 tribes as follows:

19 “(I) For fiscal year 2012—

20 “(aa) 50 percent, equal to
21 the ratio that the amount allo-
22 cated to each tribe for fiscal year
23 2011 bears to the total amount
24 allocated to all tribes for that fis-
25 cal year; and

1 “(aa) 50 percent, equal to
2 the ratio that the amount allo-
3 cated to each tribe as a tribal
4 share for fiscal year 2011 bears
5 to the total tribal share amount
6 allocated to all tribes for that fis-
7 cal year; and

8 “(bb) the remainder using
9 tribal shares as described in sub-
10 paragraphs (B) and (C).

11 “(II) For fiscal year 2013 and
12 thereafter, using tribal shares as de-
13 scribed in subparagraphs (B) and (C).

14 “(ii) TRIBAL HIGH PRIORITY
15 PROJECTS.—The High Priority Projects
16 program as included in the Tribal Trans-
17 portation Allocation Methodology of part
18 170 of title 25, Code of Federal Regula-
19 tions (as in effect on the date of enactment
20 of the American Energy and Infrastructure
21 Jobs Act of 2012), shall not continue in ef-
22 fect.

23 “(B) TRIBAL SHARES.—Tribal shares
24 under this program shall be determined using
25 the national tribal transportation facility inven-

1 tory as calculated for fiscal year 2012, and the
2 most recent data on American Indian and Alas-
3 ka Native population within each Indian tribe's
4 American Indian/Alaska Native Reservation or
5 Statistical Area, as computed under the Native
6 American Housing Assistance and Self-Deter-
7 mination Act of 1996 (25 U.S.C. 4101 et seq.),
8 in the following manner:

9 “(i) 20 percent in the ratio that the
10 total eligible lane mileage in each tribe
11 bears to the total eligible lane mileage of
12 all American Indians and Alaskan Natives.

13 For the purposes of this calculation—

14 “(I) eligible lane mileage shall be
15 computed based on the inventory de-
16 scribed in paragraph (1), using only
17 facilities included in the inventory de-
18 scribed in clause (i), (ii), or (iii) of
19 paragraph (1)(B); and

20 “(II) paved roads and gravel sur-
21 faced roads are deemed to equal 2
22 lane miles per mile of inventory, and
23 earth surfaced roads and unimproved
24 roads shall be deemed to equal 1 lane
25 mile per mile of inventory.

1 “(ii) 40 percent in the ratio that the
2 total population in each tribe bears to the
3 total population of all American Indians
4 and Alaskan Natives.

5 “(iii) 40 percent shall be divided
6 equally among each Bureau of Indian Af-
7 fairs region for distribution of tribal shares
8 as follows:

9 “(I) $\frac{1}{4}$ of 1 percent shall be dis-
10 tributed equally among Indian tribes
11 with populations of 1 to 25.

12 “(II) $\frac{3}{4}$ of 1 percent shall be dis-
13 tributed equally among Indian tribes
14 with populations of 26 to 100.

15 “(III) $3\frac{3}{4}$ percent shall be dis-
16 tributed equally among Indian tribes
17 with populations of 101 to 1,000.

18 “(IV) 20 percent shall be distrib-
19 uted equally among Indian tribes with
20 populations of 1,001 to 10,000.

21 “(V) $74\frac{3}{4}$ percent shall be dis-
22 tributed equally among Indian tribes
23 with populations of 10,001 to 60,000
24 where 3 or more Indian tribes occupy
25 this category in a single Bureau of In-

1 dian Affairs region, and Bureau of In-
2 dian Affairs regions containing less
3 than 3 Indian tribes in this category
4 shall receive funding in accordance
5 with subclause (IV) and clause (iv).

6 “(VI) $\frac{1}{2}$ of 1 percent shall be
7 distributed equally among Indian
8 tribes with populations of 60,001 or
9 more.

10 “(iv) For a Bureau of Indian Affairs
11 region that has no Indian tribes meeting
12 the population criteria under 1 or more of
13 subclauses (I) through (VI) of clause (iii),
14 the region shall redistribute any funds sub-
15 ject to such clause or clauses among any
16 such clauses for which the region has In-
17 dian tribes meeting such criteria propor-
18 tionally in accordance with the percentages
19 listed in such clauses until such funds are
20 completely distributed.

21 “(C) TRIBAL SUPPLEMENTAL FUNDING.—

22 “(i) TRIBAL SUPPLEMENTAL FUNDING
23 AMOUNT.—Of funds made available for
24 each fiscal year for the tribal transpor-
25 tation program, the Secretary shall set

1 aside the following amount for a tribal
2 supplemental program:

3 “(I) If the amount made avail-
4 able for the tribal transportation pro-
5 gram is less than or equal to
6 \$275,000,000, 10 percent of such
7 amount.

8 “(II) If the amount made avail-
9 able for the tribal transportation pro-
10 gram exceeds \$275,000,000—

11 “(aa) \$27,500,000; plus

12 “(bb) 12.5 percent of the
13 amount made available for the
14 tribal transportation program in
15 excess of \$275,000,000.

16 “(ii) TRIBAL SUPPLEMENTAL ALLOCA-
17 TION.—The Secretary shall distribute trib-
18 al supplemental funds as follows:

19 “(I) DISTRIBUTION AMONG RE-
20 GIONS.—Of the amounts set aside
21 under clause (i), the Secretary shall
22 distribute to each region of the Bu-
23 reau of Indian Affairs a share of trib-
24 al supplemental funds in proportion to
25 the regional total of tribal shares

1 based on the cumulative tribal shares
2 of all Indian tribes within such region
3 under subparagraph (B).

4 “(II) DISTRIBUTION WITHIN A
5 REGION.—Of the amount that a re-
6 gion receives under subclause (I), the
7 Secretary shall distribute tribal sup-
8 plemental funding among Indian
9 tribes within such region as follows:

10 “(aa) TRIBAL SUPPLE-
11 MENTAL AMOUNTS.—The Sec-
12 retary shall determine—

13 “(AA) which such In-
14 dian tribes would be entitled
15 under subparagraph (A) to
16 receive in a fiscal year less
17 funding than they would re-
18 ceive in fiscal year 2011
19 pursuant to the Tribal
20 Transportation Allocation
21 Methodology described in
22 subpart C of part 170 of
23 title 25, Code of Federal
24 Regulations (as in effect on
25 the date of enactment of the

1 American Energy and
2 Infrastructure Jobs Act of
3 2012); and

4 “(BB) the combined
5 amount that such Indian
6 tribes would be entitled to
7 receive in fiscal year 2011
8 pursuant to such Tribal
9 Transportation Allocation
10 Methodology in excess of the
11 amount that they would be
12 entitled to receive in the fis-
13 cal year under subparagraph
14 (B); and

15 “(bb) Subject to subclause
16 (III), distribute to each Indian
17 tribe that meets the criteria de-
18 scribed in item (aa)(AA) a share
19 of funding under this subpara-
20 graph in proportion to the share
21 of the combined amount deter-
22 mined under item (aa)(BB) at-
23 tributable to such Indian tribe.

24 “(III) CEILING.—An Indian tribe
25 may not receive under subclause (II)

1 and based on its tribal share under
2 subparagraph (A) a combined amount
3 that exceeds the amount that such In-
4 dian tribe would be entitled to receive
5 in fiscal year 2011 pursuant to the
6 Tribal Transportation Allocation
7 Methodology described in subpart C of
8 part 170 of title 25, Code of Federal
9 Regulations (as in effect on the date
10 of enactment of the American Energy
11 and Infrastructure Jobs Act of 2012).

12 “(IV) OTHER AMOUNTS.—If the
13 amount made available for a region
14 under subclause (I) exceeds the
15 amount distributed among Indian
16 tribes within that region under sub-
17 clause (II), the Secretary shall dis-
18 tribute the remainder of such region’s
19 funding under such subclause among
20 all Indian tribes in that region in pro-
21 portion to the combined amount that
22 each such Indian tribe received under
23 subparagraph (A) and subclauses (I),
24 (II), and (III).

25 “(4) TRANSFERRED FUNDS.—

1 “(A) IN GENERAL.—Not later than 30
2 days after the date on which funds are made
3 available to the Secretary of the Interior under
4 this paragraph, the funds shall be distributed
5 to, and made available for immediate use by, el-
6 igible Indian tribes, in accordance with the for-
7 mula for distribution of funds under the tribal
8 transportation program.

9 “(B) USE OF FUNDS.—Notwithstanding
10 any other provision of this section, funds made
11 available to Indian tribes for tribal transpor-
12 tation facilities shall be expended on projects
13 identified in a transportation improvement pro-
14 gram approved by the Secretary.

15 “(5) HEALTH AND SAFETY ASSURANCES.—Not-
16 withstanding any other provision of law, an Indian
17 tribal government may approve plans, specifications,
18 and estimates and commence road and bridge con-
19 struction with funds made available from the tribal
20 transportation program through a contract or agree-
21 ment under Indian Self-Determination and Edu-
22 cation Assistance Act (25 U.S.C. 450 et seq.), if the
23 Indian tribal government—

1 “(A) provides assurances in the contract or
2 agreement that the construction will meet or ex-
3 ceed applicable health and safety standards;

4 “(B) obtains the advance review of the
5 plans and specifications from a State-licensed
6 civil engineer that has certified that the plans
7 and specifications meet or exceed the applicable
8 health and safety standards; and

9 “(C) provides a copy of the certification
10 under subparagraph (A) to the Deputy Assist-
11 ant Secretary for Tribal Government Affairs,
12 Department of Transportation, or the Assistant
13 Secretary for Indian Affairs, Department of the
14 Interior, as appropriate.

15 “(6) CONTRACTS AND AGREEMENTS WITH IN-
16 DIAN TRIBES.—

17 “(A) IN GENERAL.—Notwithstanding any
18 other provision of law or any interagency agree-
19 ment, program guideline, manual, or policy di-
20 rective, all funds made available through the
21 Secretary of the Interior under this chapter and
22 section 125(e) for tribal transportation facilities
23 to pay for the costs of programs, services, func-
24 tions, and activities, or portions of programs,
25 services, functions, or activities, that are specifi-

1 cally or functionally related to the cost of plan-
2 ning, research, engineering, and construction of
3 any tribal transportation facility shall be made
4 available, upon request of the Indian tribal gov-
5 ernment, to the Indian tribal government for
6 contracts and agreements for such planning, re-
7 search, engineering, and construction in accord-
8 ance with Indian Self-Determination and Edu-
9 cation Assistance Act (25 U.S.C. 450 et seq.).

10 “(B) EXCLUSION OF AGENCY PARTICIPA-
11 TION.—All funds, including contract support
12 costs, for programs, functions, services, or ac-
13 tivities, or portions of programs, services, func-
14 tions, or activities, including supportive admin-
15 istrative functions that are otherwise
16 contractible to which subparagraph (A) applies,
17 shall be paid in accordance with subparagraph
18 (A), without regard to the organizational level
19 at which the Department of the Interior has
20 previously carried out such programs, functions,
21 services, or activities.

22 “(7) CONTRACTS AND AGREEMENTS WITH IN-
23 DIAN TRIBES.—

24 “(A) IN GENERAL.—Notwithstanding any
25 other provision of law or any interagency agree-

1 ment, program guideline, manual, or policy di-
2 rective, all funds made available through the
3 Secretary of the Interior to an Indian tribal
4 government under this chapter for a tribal
5 transportation facility program or project shall
6 be made available, on the request of the Indian
7 tribal government, to the Indian tribal govern-
8 ment for use in carrying out, in accordance
9 with the Indian Self-Determination and Edu-
10 cation Assistance Act (25 U.S.C. 450 et seq.),
11 contracts and agreements for the planning, re-
12 search, design, engineering, construction, and
13 maintenance relating to the program or project.

14 “(B) EXCLUSION OF AGENCY PARTICIPA-
15 TION.—In accordance with subparagraph (A),
16 all funds, including contract support costs, for
17 a program or project to which subparagraph
18 (A) applies shall be paid to the Indian tribal
19 government without regard to the organiza-
20 tional level at which the Department of the In-
21 terior has previously carried out, or the Depart-
22 ment of Transportation has previously carried
23 out under the tribal transportation program,
24 the programs, functions, services, or activities
25 involved.

1 “(C) CONSORTIA.—Two or more Indian
2 tribes that are otherwise eligible to participate
3 in a program or project to which this chapter
4 applies may form a consortium to be considered
5 as a single Indian tribe for the purpose of par-
6 ticipating in the project under this section.

7 “(D) SECRETARY AS SIGNATORY.—Not-
8 withstanding any other provision of law, the
9 Secretary is authorized to enter into a funding
10 agreement with an Indian tribal government to
11 carry out a tribal transportation facility pro-
12 gram or project under subparagraph (A) that is
13 located on an Indian reservation or provides ac-
14 cess to the reservation or a community of the
15 Indian tribe.

16 “(E) FUNDING.—The amount an Indian
17 tribal government receives for a program or
18 project under subparagraph (A) shall equal the
19 sum of the funding that the Indian tribal gov-
20 ernment would otherwise receive for the pro-
21 gram or project in accordance with the funding
22 formula established under this subsection and
23 such additional amounts as the Secretary deter-
24 mines equal the amounts that would have been
25 withheld for the costs of the Bureau of Indian

1 Affairs for administration of the program or
2 project.

3 “(F) ELIGIBILITY.—

4 “(i) IN GENERAL.—Subject to clause
5 (ii) and the approval of the Secretary,
6 funds may be made available under sub-
7 paragraph (A) to an Indian tribal govern-
8 ment for a program or project in a fiscal
9 year only if the Indian tribal government
10 requesting such funds demonstrates to the
11 satisfaction of the Secretary financial sta-
12 bility and financial management capability
13 during the 3 fiscal years immediately pre-
14 ceding the fiscal year for which the request
15 is being made.

16 “(ii) CONSIDERATIONS.—An Indian
17 tribal government that had no uncorrected
18 significant and material audit exceptions in
19 the required annual audit of the contracts
20 or self-governance funding agreements
21 made by the Indian tribe with any Federal
22 agency under the Indian Self-Determina-
23 tion and Education Assistance Act (25
24 U.S.C. 450 et seq.) during the 3-fiscal year
25 period referred in clause (i) shall be con-

1 clusive evidence of the financial stability
2 and financial management capability of the
3 Indian tribe for purposes of clause (i).

4 “(G) ASSUMPTION OF FUNCTIONS AND DU-
5 TIES.—An Indian tribal government receiving
6 funding under subparagraph (A) for a program
7 or project shall assume all functions and duties
8 that the Secretary of the Interior would have
9 performed with respect to a program or project
10 under this chapter, other than those functions
11 and duties that inherently cannot be legally
12 transferred under the Indian Self-Determina-
13 tion and Education Assistance Act (25 U.S.C.
14 450 et seq.).

15 “(H) POWERS.—An Indian tribal govern-
16 ment receiving funding under subparagraph (A)
17 for a program or project shall have all powers
18 that the Secretary of the Interior would have
19 exercised in administering the funds transferred
20 to the Indian tribal government for such pro-
21 gram or project under this section if the funds
22 had not been transferred, except to the extent
23 that such powers are powers that inherently
24 cannot be legally transferred under the Indian

1 Self-Determination and Education Assistance
2 Act (25 U.S.C. 450 et seq.).

3 “(I) DISPUTE RESOLUTION.—In the event
4 of a disagreement between the Secretary or the
5 Secretary of the Interior and an Indian tribe
6 over whether a particular function, duty, or
7 power may be lawfully transferred to the Indian
8 tribe under the Indian Self-Determination and
9 Education Assistance Act (25 U.S.C. 450 et
10 seq.), the Indian tribe shall have the right to
11 pursue all alternative dispute resolution and ap-
12 peal procedures authorized by that Act, includ-
13 ing regulations issued to carry out the Act.

14 “(J) TERMINATION OF CONTRACT OR
15 AGREEMENT.—On the date of the termination
16 of a contract or agreement under this section
17 by an Indian tribal government, the Secretary
18 shall transfer all funds that would have been al-
19 located to the Indian tribal government under
20 the contract or agreement to the Secretary of
21 the Interior to provide continued transportation
22 services in accordance with applicable law.

23 “(c) PLANNING.—

24 “(1) IN GENERAL.—For each fiscal year, not
25 more than 2 percent of the funds made available for

1 the tribal transportation program shall be allocated
2 among Indian tribal governments that apply for
3 transportation planning pursuant to the Indian Self-
4 Determination and Education Assistance Act (25
5 U.S.C. 450 et seq.).

6 “(2) REQUIREMENT.—An Indian tribal govern-
7 ment, in cooperation with the Secretary of the Inte-
8 rior and, as appropriate, with a State, local govern-
9 ment, or metropolitan planning organization, shall
10 carry out a transportation planning process in ac-
11 cordance with section 201(c).

12 “(3) SELECTION AND APPROVAL OF
13 PROJECTS.—A project funded under this section
14 shall be—

15 “(A) selected by the Indian tribal govern-
16 ment from the transportation improvement pro-
17 gram; and

18 “(B) subject to the approval of the Sec-
19 retary of the Interior and the Secretary.

20 “(d) TRIBAL TRANSPORTATION FACILITY
21 BRIDGES.—

22 “(1) NATIONWIDE PRIORITY PROGRAM.—The
23 Secretary shall maintain a nationwide priority pro-
24 gram for improving deficient bridges eligible for the
25 tribal transportation program.

1 “(2) FUNDING.—Before making any distribu-
2 tion under subsection (b), the Secretary shall set
3 aside not more than 2 percent of the funds made
4 available under the tribal transportation program for
5 each fiscal year to be allocated—

6 “(A) to carry out any planning, design, en-
7 gineering, preconstruction, construction, and in-
8 spection of a project to replace, rehabilitate,
9 seismically retrofit, paint, apply calcium magne-
10 sium acetate, sodium acetate/formate, or other
11 environmentally acceptable, minimally corrosive
12 anti-icing and deicing composition; or

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

16 “(3) ELIGIBLE BRIDGES.—To be eligible to re-
17 ceive funding under this subsection, a bridge de-
18 scribed in paragraph (1) shall—

19 “(A) have an opening of not less than 20
20 feet;

21 “(B) be classified as a tribal transpor-
22 tation facility; and

23 “(C) be structurally deficient or function-
24 ally obsolete.

1 “(4) APPROVAL REQUIREMENT.—The Secretary
2 may make funds available under this subsection for
3 preliminary engineering, construction, and construc-
4 tion engineering activities after approval of required
5 documentation and verification of eligibility in ac-
6 cordance with this title.

7 “(e) SAFETY.—

8 “(1) FUNDING.—Before making any distribu-
9 tion under subsection (b), the Secretary shall set
10 aside not more than 2 percent of the funds made
11 available under the tribal transportation program for
12 each fiscal year to be allocated based on an identi-
13 fication and analysis of highway safety issues and
14 opportunities on tribal land, as determined by the
15 Secretary, on application of the Indian tribal govern-
16 ments for eligible projects described in section
17 148(a)(4).

18 “(2) PROJECT SELECTION.—An Indian tribal
19 government, in cooperation with the Secretary of the
20 Interior and, as appropriate, with a State, local gov-
21 ernment, or metropolitan planning organization,
22 shall select projects from the transportation im-
23 provement program, subject to the approval of the
24 Secretary and the Secretary of the Interior.

1 “(f) FEDERAL-AID ELIGIBLE PROJECTS.—Before
2 approving as a project on a tribal transportation facility
3 any project eligible for funds apportioned under section
4 104 in a State, the Secretary shall, for projects on tribal
5 transportation facilities, determine that the obligation of
6 funds for the project is supplementary to and not in lieu
7 of the obligation of a fair and equitable share of funds
8 apportioned to the State under section 104.

Page 207, in the matter following line 12, strike
“201. General provisions.” and insert “201. Federal
lands and tribal transportation programs.”.

