

**PROPOSED CONSENSUS TRIBAL PROVISIONS FOR CONSIDERATION  
IN THE HOUSE-SENATE CONFERENCE**

**ON  
H.R. 4348**

APRIL 30, 2012

1. AUTHORIZATION AND APPROPRIATIONS.

- A. TRIBAL TRANSPORTATION PROGRAM.- Add House language from Sec. 1101(a)(4) of H.R. 7 (approved by the House Transportation and Infrastructure Committee on February 2, 2012), with technical amendments (highlighted) which amends section 1101(a)(4) to read:

“(4) TRIBAL TRANSPORTATION PROGRAM.—For the tribal transportation program under section 202 of title 23, United States Code, \$465,000,000 for each ~~of~~ fiscal years ~~2013 through 2016~~ authorized under this Act.”

- B. TRIBAL TRANSIT PROGRAM.- Retain Senate language from Sec. 20012(a) of S. 1813 (MAP-21), which amends Sec. 5311 of title 49. FORMULA GRANTS FOR OTHER THAN URBANIZED AREAS, to read:

“(a) IN GENERAL.- Section 5311 of title 49, United States Code, is amended to read as follows:

**“§5311. Formula grants for other than urbanized areas.**

“(a) DEFINITIONS.-As used in this section, the following definitions shall apply:

“(1) RECIPIENT.-The term ‘recipient’ means a State or Indian tribe that receives a Federal transit program grant directly from the Government.

“ . . .

“(I) **PUBLIC TRANSPORTATION ON INDIAN RESERVATIONS.**- Of the amounts made available or appropriated for each fiscal year pursuant to section 5338(a)(2)(F) to carry out this paragraph, the following amounts shall be apportioned each fiscal year 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) \$10,000,000 shall be distributed on a competitive basis by the Secretary.

“(B) \$20,000,000 shall be apportioned as formula grants, as provided in subsection (k).”

“(k) **FORMULA GRANTS FOR PUBLIC TRANSPORTATION ON INDIAN RESERVATIONS.**-

“(1) APPORTIONMENT.—

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

“(i) 50 percent of the total amount shall be apportioned so that each Indian tribe providing public transportation service shall receive an amount equal to the total amount apportioned under this clause multiplied by the ratio of the number of vehicle revenue miles provided by an Indian tribe divided by the total number of vehicle revenue miles provided by all Indian tribes, as reported to the Secretary;

“(ii) 25 percent of the total amount shall be apportioned equally among each Indian tribe providing at least 200,000 vehicle revenue miles of public transportation service annually, as reported to the Secretary; and

“(iii) 25 percent of the total amount shall be apportioned among each Indian tribe providing public transportation on tribal lands on which more than 1,000 low income individuals reside (as determined by the Bureau of the Census) so that each Indian tribe shall receive an amount equal to the total amount apportioned under this clause multiplied by the ratio of the number of low-income individuals residing on an Indian tribe’s lands divided by the total number of low-income individuals on tribal lands on which more than 1,000 low-income individuals reside.

“(B) LIMITATION.—No recipient shall receive more than \$300,000 of the amounts apportioned under subparagraph (A)(iii) in a fiscal year.

“(C) REMAINING AMOUNTS.—Of the amounts made available under subparagraph (A)(iii), any amounts not apportioned under that subparagraph shall be allocated among Indian tribes receiving less than \$300,000 in a fiscal year according to the formula specified in that clause.

“(D) LOW-INCOME INDIVIDUALS.—For purposes of subparagraph (A)(iii), the term ‘low-income individual’ means an individual whose family income is at or below 100 percent of the poverty line, as that term is defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), including any revision required by that section, for a family of the size involved.

“(2) NON-TRIBAL SERVICE PROVIDERS.—A recipient that is an Indian tribe may use funds apportioned under this subsection to finance public transportation services provided by a non-tribal provider of public transportation that connects residents of tribal lands with surrounding communities, improves access to employment or healthcare, or otherwise addresses the mobility needs of tribal members.”

2. EXEMPTION OF TTP FROM OBLIGATION CEILING AND REDISTRIBUTION OF UNUSED OBLIGATION AUTHORITY.

- A. **Retain Senate language from Sec. 1102(c) and (f) of MAP-21, with technical amendments (highlighted),** which exempts funds apportioned by the Secretary under sections 202 or 204 of title 23 from the distribution of obligation authority, to read:

“(c) DISTRIBUTION OF OBLIGATION AUTHORITY.—For each ~~of~~ fiscal years ~~2012 through 2013~~ authorized under this Act, the Secretary—

“ . . .

“(2) shall not distribute an amount of obligation authority provided by subsection (a) that is equal to the unobligated balance of amounts—

“(A) made available from the Highway Trust Fund (other than the Mass Transit Account) for Federal-aid highway and highway safety construction programs for previous fiscal years the funds for which are allocated by the Secretary (or apportioned by the Secretary under sections 202 or 204 of title 23, United States Code); and

“(B) for which obligation authority was provided in a previous fiscal year.”

- B. **Retain language from Sec. 1102(f)(1) of MAP-21,** to read:

“(f) REDISTRIBUTION OF CERTAIN AUTHORIZED FUNDS.—

“(1) IN GENERAL.—Not later than 30 days after the date of distribution of obligation authority under subsection (c) for each ~~of~~ fiscal years ~~2012 through 2013~~ authorized under this Act, the Secretary shall distribute to the States any funds (excluding funds authorized for the program under section 202 of title 23, United States Code) that—

“(A) are authorized to be appropriated for the fiscal year for Federal-aid highway programs; and

“(B) the Secretary determines will not be allocated to the States (or will not be apportioned to the States under section 204 of title 23, United States Code), and will not be available for obligation, for the fiscal year because of the imposition of any obligation limitation for the fiscal year.”

C. Redistribution of unused obligation authority. Add House language from Sec. 1501 of H.R. 7, amending Sec. 201(c)(6) of title 23, to read:

“(6) 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, a minimum of 10 percent of such unused obligation authority shall be allocated and distributed by the Secretary to entities eligible to receive funds under such section for purposes of funding competitively awarded high priority projects ensuring 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 product and essential service markets.”

3. DATA REPORTING CONSISTENT WITH INDIAN SELF-DETERMINATION CONTRACTS AND SELF-GOVERNANCE AGREEMENTS. Add House language from Sec. 1501 of H.R. 7, amending Sec. 201(e)(6)(C) of title 23, to read:

“(C) TRIBALTRANSPORTATIONPROGRAM.—Each Secretary collecting data under this paragraph relating to the tribal transportation program established under section 202 shall collect such data consistent with the requirements of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).”

4. MAINTENANCE. Retain Senate language from Sec. 1116(a) of MAP-21 with the following technical correction (highlighted) to be consistent with Sec. 1501 of H.R. 7, amending Sec. 202(b)(7)(A) of title 23, to read:

“(7) MAINTENANCE.— (A) USE OF FUNDS.— Notwithstanding any other provision of this title, of the amount of funds allocated to an Indian tribe from the tribal transportation program, for the purpose of maintenance (excluding road sealing which shall not be subject to any limitation), the Indian tribe, or the Secretary with the consent of the affected Indian tribe, shall not use an amount more than the greater of-

- (i) an amount equal to 25 percent; or
- (ii) \$500,000.”

5. BIA AND FHWA ADMINISTRATIVE EXPENSES. Add House language from Sec. 1501 of H.R. 7, amending Sec. 202(a)(6) of title 23, United States Code, to authorize administrative expenses for the BIA and FHWA for oversight of the Tribal Transportation Program, which authorization was omitted from MAP-21, to read:

“(6) ADMINISTRATIVE EXPENSES.—(A) IN GENERAL.—Of the funds made available to carry out the tribal transportation program for a fiscal year, up to 5 percent may be used by the Secretary or the Secretary of the Interior for program management and oversight and project-related administrative expenses.”

6. STATE USE OF FEDERAL FUNDS FOR TRIBAL TRANSPORTATION FACILITIES. Add House language from Sec. 1501 of H.R. 7, amending Sec. 202(b)(8)(c) of title 23, United States Code, with technical correction (highlighted), to read:

“(C) STATE PROVISION USE OF FEDERAL FUNDS FOR TRIBAL TRANSPORTATION FACILITIES.—

“(i) IN GENERAL.—A State may provide a portion of Federal funds apportioned to the State under chapter 1 or chapter 4 to an Indian tribe for an eligible tribal transportation facility.

“(ii) PROCEDURE.—If a State elects to provide funds to an Indian tribe under clause (i), such State shall transfer the funds directly to the Indian tribe or, if the Indian tribe elects, back to the Secretary or the Secretary of the Interior for and the appropriate Secretary shall to transfer such funds to the Indian tribe constructing or maintaining such eligible tribal transportation facility under an agreement pursuant to this section ~~paragraph~~.

“(iii) CONSTRUCTIONRESPONSIBILITY.—Notwithstanding any other provision of law, if a State provides funds referred to in clause (i) to an Indian tribe—

“(I) 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 of such State with respect to actions relatedtotheconstructionof the project; and

“(II) the Indian tribe receiving such funds shall be responsible for constructingandmaintaining a project carried out using the funds and for administering and supervising the project and funds in accordance with this section during the period referred to in subclause (I).”

7. COMPETITIVE BIDDING. Retain Senate language from Sec. 1116(a) of MAP-21, amending Sec. 202(a)(9)(i) of title 23, with the following technical correction (highlighted), to be consistent with Sec. 1501 of H.R. 7, amending Sec. 202(b)(9)(A) of title 23, to read:

“(A) CONSTRUCTION.-

“(i) IN GENERAL.-Subject to clause (ii) and subparagraph (B), construction of each project shall be performed by contract awarded by competitive bidding or other procurement process authorized under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

8. CONTRACTS AND AGREEMENTS WITH INDIAN TRIBES FOR TRIBAL TRANSPORTATION FACILITY PROGRAMS AND PROJECTS.

- A. Retain Senate language from Sec. 1116(a) of MAP-21, amending Sec. 202(b)(6) of title 23, with the following technical correction (highlighted) to expedite the transfer of transportation funds to Indian tribes and to be consistent with similar technical corrections to Sec. 202(b)(7), as amended by MAP-21, to read:

“(A) IN GENERAL.-Notwithstanding any other provision of law or any interagency agreement, program guideline, manual, or policy directive, all funds made available ~~through the Secretary of the Interior~~ under this title and chapter 53 of title 49 ~~and section 125(e)~~ for tribal transportation facilities to pay for the costs of programs, services, functions, and activities, or portions thereof, that are specifically or functionally related to the cost of any tribal transportation facility that provides access to or is located within the reservation or community of an Indian tribe shall be made available, upon request of the Indian tribal government, to the Indian tribal government for contracts, agreements and grants for such planning, research, engineering, and construction in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).”

- B. Retain Senate language from Sec. 1116(a) of MAP-21, amending Sec. 202(b)(7) of title 23, with the following technical correction (highlighted), to be consistent with Sec. 1501 of H.R. 7, amending Sec. 202(c)(8)(A) of title 23, to read:

“(A) In General.-Notwithstanding any other provision of law or any interagency agreement, program guideline, manual, or policy directive, all funds made available through the Secretary of the Interior to an Indian tribal government under this title or chapter 53 of title 49 for a tribal transportation facility program or project that is located on an Indian reservation or provides access to the reservation or a community of an Indian tribe shall be made available, on the request of the Indian tribal government, to the Indian tribal government for use in carrying out, in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 340 et seq.), ~~contracts, and agreements~~ and grants for the planning, research, design, engineering, construction, and maintenance relating to the program or project.”

9. TRIBAL ELIGIBILITY FOR DISCRETIONARY AND COMPETITIVE GRANTS. Add House language from Sec. 1501 of H.R. 7, amending Sec. 202(f) of title 23, with the following technical correction (highlighted), to read:

“(f) 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.”

10. TRIBAL TRANSPORTATION SELF-GOVERNANCE PROGRAM Add House language from Sec. 1506 of H.R. 7, establishing a new section in title 23 United States Code, to be titled, “TRIBAL TRANSPORTATION SELF-GOVERNANCE PROGRAM” to read:

“SEC. ~~1506~~ \_\_. **TRIBAL TRANSPORTATION SELF-GOVERNANCE PROGRAM.**

“(a) IN GENERAL.-Chapter 2 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) TRANSFERS OF STATE FUNDS.—

“(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 transfer the funds back to the Secretary and the Secretary shall transfer the funds to the Indian tribe in accordance with this section.

“(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.

“(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).

“(I) 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 be treated as 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 ~~this Act~~ ~~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, intertribal 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.”.

(b) 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.”.

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