

108TH CONGRESS
1ST SESSION

S. 1122

To provide equitable funding for tribal transportation programs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 22, 2003

Mr. JOHNSON (for himself and Mr. DASCHLE) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To provide equitable funding for tribal transportation programs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

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

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Tribal Transportation Program Improvement Act of
6 2003”.

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

Sec. 1. Short title; table of contents.

Sec. 2. Findings and purpose.

TITLE I—INDIAN RESERVATION ROADS

- Sec. 101. Funding for Indian reservation roads.
- Sec. 102. Federal lands highways program demonstration project.
- Sec. 103. Right-of-way agreements.
- Sec. 104. Indian reservation road program efficiency improvements.
- Sec. 105. Bureau of Indian Affairs and Federal Highway Administration program management funding.
- Sec. 106. Deputy Assistant Secretary for Tribal Government Affairs; Indian Reservation Roads Coordinating Committee.
- Sec. 107. Regulations.

TITLE II—ADDITIONAL TRIBAL TRANSPORTATION PROGRAMS

- Sec. 201. Tribal scenic byways.
- Sec. 202. Tribal transportation safety program.
- Sec. 203. Indian reservation rural transit program.

1 SEC. 2. FINDINGS AND PURPOSE.

2 (a) FINDINGS.—Congress finds that—

3 (1) because many Indian tribes are located in
 4 remote areas, transportation is particularly impor-
 5 tant to the basic quality of life and economic devel-
 6 opment of Indian tribes;

7 (2) safe roads are essential for—

8 (A) Indian children to travel to and from
 9 school;

10 (B) sick and elderly individuals to receive
 11 basic health care and medical treatment; and

12 (C) food and other necessities to be deliv-
 13 ered to shops and consumers;

14 (3) transportation is critical to the efforts of In-
 15 dian tribes to—

16 (A) sustain robust economies; and

17 (B) attract new jobs and businesses;

1 (4) most Indian tribes lack the basic transpor-
2 tation systems that other people in the United
3 States take for granted;

4 (5) Indian communities continue to lag behind
5 the rest of the United States in quality of life and
6 economic vitality;

7 (6) unemployment rates in Indian country fre-
8 quently exceed 50 percent, and poverty rates often
9 exceed 40 percent;

10 (7) the limited availability of housing and jobs
11 on Indian reservations forces people to commute
12 long distances each day to travel to work or school,
13 obtain health care, take advantage of basic govern-
14 ment services, go shopping, or even obtain drinking
15 water;

16 (8) the Indian reservation roads system estab-
17 lished under title 23, United States Code, comprises
18 more than 50,000 miles of roads under the jurisdic-
19 tion of the Bureau of Indian Affairs and tribal,
20 State, county, and local governments;

21 (9) more than $\frac{2}{3}$ of those roads are not paved,
22 and many resemble roads in third-world countries;

23 (10) as of the date of enactment of this Act,
24 approximately 140 of the 753 bridges under the ju-

1 jurisdiction of the Bureau of Indian Affairs are rated
2 as being deficient;

3 (11) The Indian reservation roads system
4 serves both Indians and the general public and is
5 part of a unified national road network;

6 (12) even though the Indian reservation roads
7 system is perhaps the most rudimentary of any
8 transportation network in the United States, more
9 than 2,000,000,000 vehicle miles are traveled annu-
10 ally on the system;

11 (13) the poor quality of so many Indian res-
12 ervation roads has a serious impact on highway safe-
13 ty;

14 (14) according to the Federal Highway Admin-
15 istration, the highway fatality rate on Indian res-
16 ervation roads is 4 times the national average high-
17 way fatality rate on all roads;

18 (15) automobile accidents are the primary
19 cause of death for young Indian individuals; and

20 (16) the Federal Highway Administration esti-
21 mates the backlog of improvement needs for Indian
22 reservation roads at approximately \$6,800,000,000.

23 (b) PURPOSE.—The purpose of this Act is to reau-
24 thorize, expand, and streamline the Indian reservation
25 roads program to improve transportation safety and better

1 meet the needs of Indian individuals and other members
2 of the traveling public.

3 **TITLE I—INDIAN RESERVATION**
4 **ROADS**

5 **SEC. 101. FUNDING FOR INDIAN RESERVATION ROADS.**

6 (a) AUTHORIZATION OF APPROPRIATIONS.—Section
7 1101(a)(8)(A) of the Transportation Equity Act for the
8 21st Century (112 Stat. 112) is amended—

9 (1) by striking “For” and inserting the fol-
10 lowing:

11 “(i) IN GENERAL.—Subject to clause
12 (ii), for”; and

13 (2) by striking “of such title” and all that fol-
14 lows and inserting “of that title—

15 “(I) \$225,000,000 for fiscal year
16 1998;

17 “(II) \$275,000,000 for each of
18 fiscal years 1999 through 2003;

19 “(III) \$550,000,000 for fiscal
20 year 2004,;

21 “(IV) \$625,000,000 for fiscal
22 year 2005; and

23 “(V) \$725,000,000 for each of
24 fiscal years 2006 through 2009.”; and

25 (3) by adding at the end the following:

1 “(ii) MAINTENANCE.—Of the amounts
2 made available for each fiscal year under
3 subclauses (III) through (V) of clause (i),
4 not less than \$100,000,000 shall be
5 used—

6 “(I) to maintain roads on Indian
7 reservations in the United States; and

8 “(II) to maintain tribal transpor-
9 tation facilities serving Indian reserva-
10 tions and other tribal communities in
11 the United States.”.

12 (b) OBLIGATION CEILING.—Section 1102(c)(1) of the
13 Transportation Equity Act for the 21st Century (23
14 U.S.C. 104 note; 112 Stat. 116) is amended—

15 (1) by striking “distribute obligation” and in-
16 serting the following: “distribute—

17 “(A) obligation”;

18 (2) by inserting “and” after the semicolon at
19 the end; and

20 (3) by adding at the end the following:

21 “(B) for any fiscal year after fiscal year
22 2003, any amount of obligation authority made
23 available for Indian reservation road bridges
24 under section 202(d)(4), and for Indian res-

1 ervation roads under section 204, of title 23,
2 United States Code;”.

3 (c) INDIAN RESERVATION ROAD BRIDGES.—Section
4 202(d)(4) of title 23, United States Code, is amended—

5 (1) in subparagraph (B)—

6 (A) by striking “(B) RESERVATION.—Of
7 the amounts” and all that follows through “to
8 replace,” and inserting the following:

9 “(B) FUNDING.—

10 “(i) RESERVATION OF FUNDS.—Not-
11 withstanding any other provision of law,
12 there is authorized to be appropriated from
13 the Highway Trust Fund \$15,000,000 for
14 each of fiscal years 2004 through 2009 to
15 carry out planning, design, engineering,
16 construction, and inspection of projects to
17 replace;” and

18 (B) by adding at the end the following:

19 “(ii) AVAILABILITY.—Funds made
20 available to carry out this subparagraph
21 shall be available for obligation in the same
22 manner as if the funds were apportioned
23 under chapter 1.”; and

24 (2) by striking subparagraph (D) and inserting
25 the following:

1 “(D) APPROVAL AND NEED REQUIRE-
2 MENTS.—

3 “(i) PRELIMINARY ENGINEERING.—
4 Funds for preliminary engineering for In-
5 dian reservation road bridge projects under
6 this subsection may be made available by
7 the Secretary on receipt of a request
8 from—

9 “(I) an Indian tribe; or

10 “(II) the Secretary of the Inte-
11 rior.

12 “(ii) CONSTRUCTION.—Funds for con-
13 struction of Indian reservation road bridge
14 projects under this subsection shall be
15 made available by the Secretary only—

16 “(I) after approval by the Sec-
17 retary of plans, specifications, and es-
18 timates relating to the projects; and

19 “(II) in amounts directly propor-
20 tional to the actual need of each In-
21 dian reservation, as determined by the
22 Secretary based on the number of de-
23 ficient bridges on each reservation and
24 the projected cost of rehabilitation of
25 those bridges.”.

1 (d) INDIAN RESERVATION ROAD PLANNING.—Sec-
2 tion 204(j) of title 23, United States Code, is amended
3 in the first sentence by striking “2 percent” and inserting
4 “5 percent”.

5 **SEC. 102. FEDERAL LANDS HIGHWAYS PROGRAM DEM-**
6 **ONSTRATION PROJECT.**

7 Section 202(d)(3) of title 23, United States Code, is
8 amended by adding at the end the following:

9 “(C) FEDERAL LANDS HIGHWAY PROGRAM
10 DEMONSTRATION PROJECT.—

11 “(i) IN GENERAL.—The Secretary
12 shall establish a demonstration project
13 under which all funds made available
14 under this title for Indian reservation
15 roads and for highway bridges located on
16 Indian reservation roads as provided for in
17 subparagraph (A) shall be made available,
18 on the request of an affected Indian tribal
19 government, to the Indian tribal govern-
20 ment for use in carrying out, in accordance
21 with the Indian Self-Determination and
22 Education Assistance Act (25 U.S.C. 450
23 et seq.), contracts and agreements for the
24 planning, research, engineering, and con-
25 struction described in that subparagraph.

1 “(ii) EXCLUSION OF AGENCY PARTICI-
2 PATION.—In accordance with subpara-
3 graph (B), all funds for Indian reservation
4 roads and for highway bridges located on
5 Indian reservation roads to which clause
6 (i) applies shall be paid without regard to
7 the organizational level at which the Fed-
8 eral lands highway program has previously
9 carried out the programs, functions, serv-
10 ices, or activities involved.

11 “(iii) SELECTION OF PARTICIPATING
12 TRIBES.—

13 “(I) PARTICIPANTS.—

14 “(aa) IN GENERAL.—For
15 each fiscal year, the Secretary
16 shall select 12 geographically di-
17 verse Indian tribes from the ap-
18 plicant pool described in sub-
19 clause (II) to participate in the
20 demonstration project carried out
21 under clause (i).

22 “(bb) CONSORTIA.—Two or
23 more Indian tribes that are oth-
24 erwise eligible to participate in a
25 program or activity to which this

1 title applies may form a consor-
2 tium to be considered as a single
3 Indian tribe for the purpose of
4 becoming part of the applicant
5 pool under subclause (II).

6 “(cc) FUNDING.—An Indian
7 tribe participating in the pilot
8 program under this subpara-
9 graph shall receive funding in an
10 amount equal to the sum of the
11 funding that the Indian tribe
12 would otherwise receive in ac-
13 cordance with the funding for-
14 mula established under the other
15 provisions of this subsection, and
16 an additional percentage of that
17 amount equal to the percentage
18 of funds withheld during the ap-
19 plicable fiscal year for the road
20 program management costs of
21 the Bureau of Indian Affairs
22 under subsection (f)(1).

23 “(II) APPLICANT POOL.—The ap-
24 plicant pool described in this sub-

1 clause shall consist of each Indian
2 tribe (or consortium) that—

3 “(aa) has successfully com-
4 pleted the planning phase de-
5 scribed in subclause (III);

6 “(bb) has requested partici-
7 pation in the demonstration
8 project under this subparagraph
9 through the adoption of a resolu-
10 tion or other official action by
11 the tribal governing body; and

12 “(cc) has demonstrated fi-
13 nancial stability and financial
14 management capability in accord-
15 ance with subclause (III) during
16 the 3-fiscal year period imme-
17 diately preceding the fiscal year
18 for which participation under this
19 subparagraph is being requested.

20 “(III) CRITERIA FOR DETER-
21 MINING FINANCIAL STABILITY AND FI-
22 NANCIAL MANAGEMENT CAPACITY.—
23 For the purpose of subclause (II), evi-
24 dence that, during the 3-year period
25 referred to in subclause (II)(cc), an

1 Indian tribe had no uncorrected sig-
2 nificant and material audit exceptions
3 in the required annual audit of the In-
4 dian tribe's self-determination con-
5 tracts or self-governance funding
6 agreements with any Federal agency
7 shall be conclusive evidence of the re-
8 quired stability and capability.

9 “(IV) PLANNING PHASE.—

10 “(aa) IN GENERAL.—An In-
11 dian tribe (or consortium) re-
12 questing participation in the
13 demonstration project under this
14 subparagraph shall complete a
15 planning phase that shall include
16 legal and budgetary research and
17 internal tribal government and
18 organization preparation.

19 “(bb) ELIGIBILITY.—A tribe
20 (or consortium) described in item
21 (aa) shall be eligible to receive a
22 grant under this subclause to
23 plan and negotiate participation
24 in a project described in that
25 item.”.

1 **SEC. 103. RIGHT-OF-WAY AGREEMENTS.**

2 Section 202(d) of title 23, United States Code, is
3 amended by adding at the end the following:

4 “(5) RIGHT-OF-WAY AGREEMENTS.—

5 “(A) IN GENERAL.—Notwithstanding any
6 other provision of law, an Indian tribe or tribal
7 organization shall not be subject to part 169 of
8 title 25, Code of Federal Regulations (or a suc-
9 cessor regulation), in carrying out an Indian
10 reservation road under this title in accordance
11 with a contract or agreement entered into
12 under the Indian Self-Determination and Edu-
13 cation Assistance Act (25 U.S.C. 450b et seq.).

14 “(B) CRITERIA.—The Secretary shall es-
15 tablish criteria for right-of-way agreements de-
16 veloped by an Indian tribe or tribal organization
17 under this subsection in accordance with regula-
18 tions promulgated under section 153.”.

19 **SEC. 104. INDIAN RESERVATION ROAD PROGRAM EFFI-
20 CIENCY IMPROVEMENTS.**

21 (a) TRIBAL FLEXIBILITY AND INNOVATIVE FINANC-
22 ING.—Section 115 of title 23, United States Code, is
23 amended by adding at the end the following:

24 “(d) TRIBAL RECEIPT OF ADVANCE CONSTRUCTION
25 FUNDS.—

1 “(1) IN GENERAL.—Notwithstanding any other
 2 provision of law, an Indian tribe or tribal organiza-
 3 tion that is eligible to participate in an Indian res-
 4 ervation road program under section 202(d) shall be
 5 eligible to receive advance construction funds for the
 6 programs identified in subsection (a) for use for
 7 projects on the Indian reservation road program sys-
 8 tem.

9 “(2) STATUS.—An eligible Indian tribe or tribal
 10 organization described in paragraph (1) shall be con-
 11 sidered to be a State for the purpose of this sec-
 12 tion.”.

13 (b) EMERGENCY FUNDS.—Section 125(e) of title 23,
 14 United States Code, is amended—

15 (1) by striking “(e) The Secretary” and insert-
 16 ing the following:

17 “(e) EMERGENCY FUNDS.—

18 “(1) IN GENERAL.—The Secretary”; and

19 (2) by adding at the end the following:

20 “(2) APPLICATIONS FOR EMERGENCY FUNDS.—

21 “(A) IN GENERAL.—Notwithstanding any
 22 other provision of law—

23 “(i) an Indian tribal government may
 24 submit directly to the Secretary an applica-
 25 tion for emergency funds for the repair or

1 reconstruction of Indian reservation roads
2 and other tribal transportation facilities;
3 and

4 “(ii) the Secretary shall process the
5 application in the same manner in which
6 similar applications from Federal agencies
7 are processed.

8 “(B) CRITERIA.—The Secretary shall de-
9 velop criteria for emergency funds applications
10 under this subsection in accordance with regula-
11 tions promulgated in accordance with section
12 135.”.

13 (c) PAYMENTS ON FEDERAL-AID PROJECTS UNDER-
14 TAKEN BY A FEDERAL AGENCY OR INDIAN TRIBE.—Sec-
15 tion 132 of title 23, United States Code, is amended—

16 (1) in the first sentence, by striking “Where”
17 and inserting the following:

18 “(1) IN GENERAL.—If”;

19 (2) in the second sentence, by striking “Upon”
20 and inserting the following:

21 “(2) ADJUSTMENT.—On”;

22 (3) in the last sentence, by striking “Any” and
23 inserting the following:

24 “(3) CREDITING OF FUNDS.—Any”; and

25 (4) by adding at the end the following:

1 “(d) DIRECT PERFORMANCE OF DESIGN ON CON-
2 STRUCTION ACTIVITIES.—

3 “(1) IN GENERAL.—If the Federal-aid project
4 affects a tribal transportation facility, the State
5 shall consult with the affected Indian tribe to deter-
6 mine whether the Indian tribe is interested in di-
7 rectly performing design or construction activities on
8 all or a portion of the Federal-aid project.

9 “(2) DEPOSIT WITH OR PAYMENT TO FEDERAL
10 AGENCY.—If an agreement is reached between the
11 State and the affected Indian tribe, the State shall
12 make a deposit with or payment to the appropriate
13 Federal agency to permit the Indian tribe to carry
14 out design or construction activities on the Federal-
15 aid project in accordance with a funding agreement
16 authorized under the Indian Self-Determination and
17 Education Assistance Act (25 U.S.C. 450 et seq.).

18 “(3) FEDERAL SHARE.—If the State elects to
19 directly perform design or construction activities
20 under paragraph (1), the Federal share payable for
21 the Federal-aid project shall be 100 percent.”.

22 (d) SURFACE TRANSPORTATION PROGRAM.—Section
23 133(c) of title 23, United States Code, is amended by in-
24 serting “are a tribal transportation facility or” after “un-
25 less such roads.”

1 (e) SCOPE OF AUTHORITY.—Section 202(d)(3)(B) of
2 title 23, United States Code, is amended—

3 (1) by striking “(B) EXCLUSION OF AGENCY
4 PARTICIPATION.—Funds for” and inserting the fol-
5 lowing:

6 “(B) EXCLUSION OF AGENCY PARTICIPA-
7 TION.—

8 “(i) IN GENERAL.—Funds for”; and
9 (2) by adding at the end the following:

10 “(ii) ASSUMPTION OF RESPONSIBI-
11 BILITY.—In accordance with this subpara-
12 graph, and notwithstanding any other pro-
13 vision of law, an Indian tribe or tribal or-
14 ganization may assume responsibility for
15 any program, function, service, or activity
16 under this subsection (other than any pro-
17 gram, function, service, or activity that, as
18 determined by the Secretary, is inherently
19 Federal and cannot be legally transferred)
20 in accordance with a contract or agreement
21 under title I or title IV of the Indian Self-
22 Determination and Education Assistance
23 Act (25 U.S.C. 450b et seq.).

24 “(iii) DISPUTE OVER TRANSFER-
25 ABILITY.—In the event of a disagreement

1 between the Secretary and an Indian tribe
2 or tribal organization over whether a par-
3 ticular program, function, service or activ-
4 ity may be lawfully transferred in accord-
5 ance with clause (ii), the Indian tribe or
6 tribal organization may pursue all alter-
7 native dispute resolution and appeal proce-
8 dures authorized by the Indian Self-Deter-
9 mination and Education Assistance Act
10 (25 U.S.C. 450b et seq.).”.

11 (f) ADVANCE FUNDING AND USE OF SAVINGS.—Sec-
12 tion 202(d) of title 23, United States Code, (as amended
13 by section 103) is amended by adding at the end the fol-
14 lowing:

15 “(6) ADVANCE FUNDING.—Notwithstanding
16 any other provision of law (including an interagency
17 agreement), all funds made available to an Indian
18 tribal government or tribal organization under para-
19 graph (3) shall be provided as advance payments, in
20 the form of annual or semiannual installments at the
21 discretion of the Indian tribe or tribal organization.

22 “(7) USE OF SAVINGS AND PROGRAM IN-
23 COME.—Notwithstanding any other provision of law
24 (including an interagency agreement), all funds
25 made available to an Indian tribal government or

1 tribal organization in accordance with paragraph (3)
2 for a fiscal year that are unexpended at the end of
3 the fiscal year, including any program income
4 earned by the Indian tribe or tribal organization as
5 a result of carrying out the contract or agreement—

6 “(A) shall be used by the Indian tribe or
7 tribal organization to provide additional services
8 or benefits under the contract or agreement;
9 and

10 “(B) shall not be a basis for reducing the
11 amount of funds provided to the Indian tribe or
12 tribal organization in future years.”.

13 (g) APPROVAL OF PLANS, SPECIFICATIONS, AND ES-
14 TIMATES.—Section 202 of title 23, United States Code,
15 is amended by adding at the end the following:

16 “(f) APPROVAL OF PLANS, SPECIFICATIONS, AND ES-
17 TIMATES.—

18 “(1) IN GENERAL.—Notwithstanding any other
19 provision of law, an Indian tribe or tribal organiza-
20 tion may approve plans, specifications, and esti-
21 mates, and commence road and bridge construction
22 under this section, that are funded through a con-
23 tract or agreement under the Indian Self-Determina-
24 tion and Education Assistance Act (25 U.S.C. 450b
25 et seq.), if the Indian tribe or tribal organization—

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 licensed profes-
6 sional who has certified that the plans and
7 specifications meet or exceed applicable health
8 and safety standards; and

9 “(C) provides a copy of the certification
10 under subparagraph (B) to the Assistant Sec-
11 retary for Indian Affairs.

12 “(2) CONTRACT TO SERVE AS STEWARDSHIP
13 AGREEMENT.—Notwithstanding any other provision
14 of law, an Indian tribe or tribal organization may
15 carry out any program, function, service, or activity
16 of an Indian reservation road program under this
17 section, including any program, function, service, or
18 activity that, before the date of enactment of this
19 subsection, was the subject of a stewardship agree-
20 ment executed in accordance with the terms of a
21 contract or agreement entered into under the Indian
22 Self-Determination and Education Assistance Act
23 (25 U.S.C. 450b et seq.).”.

1 (h) TRANSPORTATION IMPROVEMENT PROGRAM.—
2 Section 204(a) of title 23, United States Code, is amended
3 by striking paragraph (3) and inserting the following:

4 “(3) APPROVAL OF TRANSPORTATION IMPROVE-
5 MENT PROGRAM.—

6 “(A) IN GENERAL.—To be effective, the
7 transportation improvement program developed
8 as a part of the transportation planning process
9 under this section shall be approved by the Sec-
10 retary.

11 “(B) FREQUENCY OF UPDATES.—The Sec-
12 retary of the Interior shall provide to the Sec-
13 retary an updated tribal transportation im-
14 provement program—

15 “(i) on a quarterly basis; or

16 “(ii) more frequently, as necessary.

17 “(C) MODIFICATIONS.—If an Indian tribe
18 requests a modification of the tribal transpor-
19 tation improvement program of the Indian
20 tribe, the Secretary of the Interior shall com-
21 plete any pending update under subparagraph
22 (B) not later than 45 days after the date of re-
23 ceipt of the request, except in unusual cir-
24 cumstances, as determined by the Secretary of
25 the Interior.”.

1 (i) ELIGIBILITY; CONTRACT SUPPORT FUNDING.—
2 Section 204 of title 23, United States Code, is amended
3 by striking subsection (c) and inserting the following:

4 “(c) APPROVAL OF PROJECTS.—

5 “(1) IN GENERAL.—Before approving as a
6 project on an Indian reservation road in a State any
7 project eligible to receive funds apportioned under
8 section 104 or 144, the Secretary shall determine
9 that the obligation of funds for the project is—

10 “(A) supplementary to, and not in lieu of,
11 the obligation for projects on Indian reservation
12 roads; and

13 “(B) a fair and equitable share of funds
14 apportioned to the State under section 104.

15 “(2) SET-ASIDE FOR SHORTAGES.—

16 “(A) IN GENERAL.—Of the amounts made
17 available for each fiscal year from the Highway
18 Trust Fund for Indian reservation road pro-
19 grams under this section, not more than
20 \$10,000,000 may be used to mitigate the short-
21 age in amounts available for obligation by con-
22 tracting or compacting Secretaries under the
23 Indian Self-Determination and Education As-
24 sistance Act (25 U.S.C. 450b et seq.) to provide
25 contract support cost funding to Indian tribes

1 and tribal organizations with respect to the ad-
2 ministration by the Indian tribes and tribal or-
3 ganizations of services, functions, and activities,
4 of Indian reservation road programs under self-
5 determination contracts and self-government
6 agreements.

7 “(B) REPORT.—For each fiscal year, the
8 Secretary of the Interior shall submit to Con-
9 gress a report that describes the total amount
10 of funds made available under subparagraph
11 (A) for the fiscal year that were used to miti-
12 gate the shortages described in subparagraph
13 (A).

14 “(3) ROAD SEALING PROJECTS.—

15 “(A) IN GENERAL.—Notwithstanding any
16 other provision of this title, the Bureau of In-
17 dian Affairs, in carrying out a tribal transpor-
18 tation program under the jurisdiction of the
19 Bureau of Indian Affairs, may expend not more
20 than 15 percent of the funds apportioned for
21 the tribal transportation program from the
22 Highway Trust Fund for each fiscal year to
23 carry out road sealing projects.

24 “(B) RESPONSIBILITY.—The Bureau of
25 Indian Affairs be responsible for road mainte-

1 nance programs on Indian reservations, includ-
2 ing the responsibility to make annual funding
3 requests.”.

4 **SEC. 105. BUREAU OF INDIAN AFFAIRS AND FEDERAL**
5 **HIGHWAY ADMINISTRATION PROGRAM MAN-**
6 **AGEMENT FUNDING.**

7 Section 202 of title 23, United States Code (as
8 amended by section 104(g)), is amended by adding at the
9 end the following:

10 “(g) TRIBAL TRANSPORTATION.—

11 “(1) BUREAU OF INDIAN AFFAIRS.—Notwith-
12 standing any other provision of law, the Secretary
13 shall not deduct from any apportionment of funds
14 made available for tribal transportation purposes to
15 an Indian tribe or tribal organization under the In-
16 dian Self-Determination and Education Assistance
17 Act (25 U.S.C. 450b et seq.), any administrative ex-
18 penses incurred by the Bureau of Indian Affairs re-
19 lating to individual projects carried out by the In-
20 dian tribe or tribal organization in accordance with
21 a contract or agreement under that Act.

22 “(2) PROGRAM MANAGEMENT AND ADMINISTRA-
23 TIVE EXPENSE REPORTS.—Not later than November
24 30, 2004, and annually thereafter, the Assistant
25 Secretary for Indian Affairs and the Director of the

1 Federal Highway Administration shall submit to
 2 Congress a report that describes, for the fiscal year
 3 preceding the fiscal year in which the report is sub-
 4 mitted, line item and narrative summaries of the
 5 use, by each of the Bureau of Indian Affairs and
 6 the Federal Highway Administration, of funds asso-
 7 ciated with the program management and adminis-
 8 trative expenses of Indian reservation road pro-
 9 grams.”.

10 **SEC. 106. DEPUTY ASSISTANT SECRETARY FOR TRIBAL**
 11 **GOVERNMENT AFFAIRS; INDIAN RESERVA-**
 12 **TION ROADS COORDINATING COMMITTEE.**

13 (a) IN GENERAL.—Chapter 3 of title 23, United
 14 States Code, is amended by adding at the end the fol-
 15 lowing:

16 **“§ 325. Deputy Assistant Secretary for Tribal Govern-**
 17 **ment Affairs**

18 “(a) ESTABLISHMENT OF POSITION.—

19 “(1) IN GENERAL.—There is established in the
 20 Office of the Secretary of Transportation the posi-
 21 tion of Deputy Assistant Secretary for Tribal Gov-
 22 ernmental Affairs (referred to in this section as the
 23 ‘Deputy’).

24 “(2) APPOINTMENT.—The Deputy shall be ap-
 25 pointed by the Secretary.

1 “(b) RESPONSIBILITIES.—The Deputy shall—

2 “(1) plan, coordinate, and implement policy and
3 programs of the Department of Transportation that
4 serve Indian tribes and tribal organizations;

5 “(2) coordinate Indian reservation road pro-
6 grams and activities in all branches and administra-
7 tions of the Department of Transportation;

8 “(3) participate in any negotiated rulemaking
9 relating to, or having an impact on, projects, pro-
10 grams, or funding associated with the Indian res-
11 ervation roads program; and

12 “(4) serve as a member of the Joint Indian
13 Reservation Roads Coordinating Committee estab-
14 lished under section 326(a).

15 **“§ 326. Indian Reservation Roads Coordinating Com-
16 mittee**

17 “(a) IN GENERAL.—Using funds made available to
18 the Secretary and the Secretary of the Interior under this
19 title, not later than 180 days after the date of enactment
20 of this section, the Secretary and the Secretary of the In-
21 terior shall establish a Joint Indian Reservation Roads Co-
22 ordinating Committee (referred to in this section as the
23 ‘Committee’).

1 “(b) PURPOSE.—The Committee shall assist the Sec-
2 retary in carrying out the goals and purposes of this title
3 with respect to Indian reservation roads.

4 “(c) COMPOSITION.—The Committee shall be com-
5 posed of—

6 “(1) the Deputy Assistant Secretary for Tribal
7 Governmental Affairs appointed under section
8 325(a)(2); and

9 “(2) such other members as the Secretary may
10 appoint after consultation with interested Indian
11 tribes through the negotiated rulemaking committee
12 established under section 202(d)(2)(B).”.

13 (b) CONFORMING AMENDMENT.—The analysis for
14 chapter 3 of title 21 is amended by inserting after the
15 item relating to section 324 the following:

 “325. Deputy Assistant Secretary for Tribal Government Affairs.

 “326. Indian Reservation Roads Coordinating Committee.”.

16 **SEC. 107. REGULATIONS.**

17 Section 202(d)(2) of title 23, United States Code, is
18 amended—

19 (1) by striking subparagraphs (B) and (C);

20 (2) by redesignating subparagraph (D) as sub-
21 paragraph (H); and

22 (3) by inserting after subparagraph (A) the fol-
23 lowing:

1 “(B) REGULATIONS.—The Secretary and
2 the Secretary of the Interior shall promulgate
3 joint regulations governing the Indian reserva-
4 tion road programs carried out under this sub-
5 section by establishing a negotiated rulemaking
6 committee in accordance with sections 563(a)
7 and 565(a) of title 5.

8 “(C) NEGOTIATED RULEMAKING COM-
9 MITTEE.—In establishing a negotiated rule-
10 making committee under subparagraph (B), the
11 Secretary of the Interior and Secretary of
12 Transportation shall—

13 “(i) apply the procedures established
14 under subchapter III of chapter 5 of title
15 5 in a manner that reflects the unique gov-
16 ernment-to-government relationship be-
17 tween the Indian tribes and the United
18 States; and

19 “(ii) ensure that membership of the
20 committee includes only representatives
21 of—

22 “(I) the Federal Government;

23 and

1 “(II) geographically diverse
2 small, medium, and large Indian
3 tribes.

4 “(D) EXPIRATION OF RULEMAKING AU-
5 THORITY.—The authority of the Secretary and
6 the Secretary of the Interior to promulgate reg-
7 ulations under subparagraph (B) terminates on
8 the date that is 20 months after the date of en-
9 actment of the Tribal Transportation Program
10 Improvement Act of 2003.

11 “(E) ADVISORY ENTITIES.—Notwith-
12 standing any other provision of law, the Sec-
13 retary and the Secretary of the Interior may
14 jointly establish and fund such interagency
15 committees or other interagency entities (in-
16 cluding advisory entities comprised of tribal
17 representatives) as are appropriate to carry out
18 this paragraph.

19 “(F) FUNDING PROCEDURES AND ELIGI-
20 BILITY CRITERIA.—Not later than 180 days
21 after funds are made available for fiscal year
22 2004 to carry out Indian reservation road pro-
23 grams under this subsection, the Secretary and
24 the Secretary of the Interior shall jointly, in
25 consultation with Indian tribal governments—

1 “(i) develop funding procedures and
 2 eligibility criteria applicable to Indian
 3 tribes and tribal organizations with respect
 4 to allocations and grants authorized under
 5 this title; and

6 “(ii) publish in the Federal Register a
 7 description of the procedures and criteria.

8 “(G) COORDINATION OF INDIAN INTER-
 9 MODAL TRANSPORTATION PROGRAMS.—In pro-
 10 mulgating regulations to carry out section 204
 11 and other applicable provisions of law, the Sec-
 12 retary may coordinate and centralize the admin-
 13 istration of Indian intermodal transportation
 14 programs to ensure that the purposes of the
 15 programs are achieved.”.

16 **TITLE II—ADDITIONAL TRIBAL**
 17 **TRANSPORTATION PROGRAMS**

18 **SEC. 201. TRIBAL SCENIC BYWAYS.**

19 (a) IN GENERAL.—Section 162(a) of title 23, United
 20 States Code, is amended by adding at the end the fol-
 21 lowing:

22 “(4) TRIBAL SCENIC BYWAYS COMPONENT.—

23 “(A) DEFINITION OF NATIVE VILLAGE.—

24 In this paragraph, the term ‘Native village’ has
 25 the meaning given the term in section 3 of the

1 Alaska Native Claims Settlement Act (43
2 U.S.C. 1602).

3 “(B) ESTABLISHMENT.—In recognition of
4 roads and highways that provide access to, or
5 possess significant cultural, historical, rec-
6 reational, or scenic value within, Indian commu-
7 nities and Native villages, the Secretary shall
8 carry out a tribal scenic byways component
9 within the national scenic byways program.

10 “(C) DESIGNATION OF TRIBAL SCENIC BY-
11 WAYS.—The Secretary shall designate as tribal
12 scenic byways roads or bridges that—

13 “(i) have been nominated for designa-
14 tion as a National Scenic Byway or All-
15 American Road by the Secretary of the In-
16 terior, in consultation with affected tribal
17 governments; and

18 “(ii) as determined by the Secretary—

19 “(I) qualify as tribal transpor-
20 tation facilities, as determined by the
21 Secretary; and

22 “(II) possess outstanding cul-
23 tural, historical, recreational, or scenic
24 qualities within Indian communities
25 and Native villages.

1 “(D) INCLUSION AS NATIONAL SCENIC BY-
2 WAYS OR ALL-AMERICAN ROADS.—After des-
3 ignation of a road or bridge as a tribal scenic
4 byway under subparagraph (C), the Secretary
5 may accept a road or bridge for inclusion in the
6 registry of National Scenic Byways or All-
7 American Roads.

8 “(E) FUNDING AGREEMENTS.—Notwith-
9 standing any other provision of law, an Indian
10 tribe or tribal organization that receives a grant
11 or technical assistance under subsection (b) for
12 a tribal scenic byway may administer that grant
13 or assistance in accordance with a funding
14 agreement between the Indian tribe or tribal or-
15 ganization and the Secretary of the Interior
16 under the Indian Self-Determination and Edu-
17 cation Assistance Act (25 U.S.C. 450 et seq.)
18 that is in effect as of the date of provision of
19 the grant or assistance.”.

20 (b) CONFORMING AMENDMENTS.—

21 (1) Section 162(b) of title 23, United States
22 Code, is amended—

23 (A) in paragraph (1), by striking “States
24 to—” and inserting “States and Indian tribes
25 to—”; and

1 (B) in paragraph (2)—

2 (i) in subparagraph (B), by striking
3 “and” at the end;

4 (ii) in subparagraph (C), by striking
5 the period at the end and inserting “;
6 and”; and

7 (iii) by adding at the end the fol-
8 lowing:

9 “(D) each eligible project that qualifies as
10 a tribal transportation facility, as determined
11 by the Secretary.”.

12 (2) Section 162(c) of title 23, United States
13 Code, is amended—

14 (A) in paragraph (3), by inserting “tribal
15 scenic byway,” after “State scenic byway,”; and

16 (B) by adding at the end the following:

17 “(9) An activity relating to the planning, de-
18 sign, construction or development of a tribal scenic
19 byway program or project.”.

20 **SEC. 202. TRIBAL TRANSPORTATION SAFETY PROGRAM.**

21 (a) IN GENERAL.—Chapter 4 of title 23, United
22 States Code, is amended by adding at the end the fol-
23 lowing:

1 **“§ 412. Tribal transportation safety program**

2 “(a) DEFINITION OF INDIAN TRIBE.—In this section,
3 the term ‘Indian tribe’ has the meaning given the term
4 in section 4 of the Indian Self-Determination and Edu-
5 cation Assistance Act (25 U.S.C. 450b).

6 “(b) PROGRAM.—

7 “(1) IN GENERAL.—The Secretary shall carry
8 out a program to provide to eligible Indian tribes (as
9 determined by the Secretary) competitive grants for
10 use in establishing tribal transportation safety pro-
11 grams on—

12 “(A) Indian reservations; and

13 “(B) other land under the jurisdiction of
14 an Indian tribe.

15 “(2) USE OF FUNDS.—Funds from a grant pro-
16 vided under paragraph (1) may be used to carry out
17 a project or activity—

18 “(A) to prevent the operation of motor ve-
19 hicles by intoxicated individuals;

20 “(B) to promote increased seat belt use
21 rates;

22 “(C) to eliminate hazardous locations on,
23 or hazardous sections or elements of—

24 “(i) a public road;

25 “(ii) a public surface transportation
26 facility;

1 “(iii) a publicly-owned bicycle or pe-
2 destrian pathway or trail; or

3 “(iv) a traffic calming measure;

4 “(D) to eliminate hazards relating to rail-
5 way-highway crossings; or

6 “(E) to increase transportation safety by
7 any other means, such as—

8 “(i) building wider shoulders;

9 “(ii) providing additional signage; or

10 “(iii) carrying out any other appro-
11 priate activity, as determined by the Sec-
12 retary.

13 “(c) FEDERAL SHARE.—The Federal share of the
14 cost of carrying out the program under this section shall
15 be 100 percent.

16 “(d) FUNDING.—Notwithstanding any other provi-
17 sion of law, there are authorized to be appropriated from
18 the Highway Trust Fund (other than the Mass Transit
19 Account) to carry out this section \$50,000,000 for each
20 of fiscal years 2004 through 2009.”.

21 (b) CONFORMING AMENDMENT.—The analysis for
22 chapter 4 of title 23, United States Code, is amended by
23 inserting after the item relating to section 411 the fol-
24 lowing:

“412. Tribal transportation safety program.”.

1 **SEC. 203. INDIAN RESERVATION RURAL TRANSIT PRO-**
2 **GRAM.**

3 Section 5311 of title 49, United States Code, is
4 amended by adding at the end the following:

5 “(k) INDIAN RESERVATION RURAL TRANSIT PRO-
6 GRAM.—

7 “(1) DEFINITION OF INDIAN TRIBE.—In this
8 subsection, the term ‘Indian tribe’ has the meaning
9 given the term in section 4 of the Indian Self-Deter-
10 mination and Education Assistance Act (25 U.S.C.
11 450b).

12 “(2) PROGRAM.—

13 “(A) IN GENERAL.—The Secretary of
14 Transportation shall establish and carry out a
15 program to provide competitive grants to Indian
16 tribes to establish rural transit programs on
17 reservations or other land under the jurisdiction
18 of the Indian tribes.

19 “(B) AMOUNT OF GRANTS.—The amount
20 of a grant provided to an Indian tribe under
21 subparagraph (A) shall be based on the need of
22 the Indian tribe, as determined by the Sec-
23 retary of Transportation.

24 “(3) FUNDING.—Notwithstanding any other
25 provision of law, for each fiscal year, of the amount
26 made available to carry out this section under sec-

1 tion 5338 for the fiscal year, the Secretary of Trans-
2 portation shall use \$20,000,000 to carry out this
3 subsection.”.

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