

114TH CONGRESS
1ST SESSION

H. R. 1068

To amend title 23, United States Code, to direct the Secretary of Transportation to carry out a tribal transportation self-governance program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 25, 2015

Mr. DEFAZIO (for himself and Mr. YOUNG of Alaska) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

To amend title 23, United States Code, to direct the Secretary of Transportation to carry out a tribal transportation self-governance program, 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.**

4 This Act may be cited as the “Tribal Transportation
5 Self-Governance Act of 2015”.

1 **SEC. 2. TRIBAL TRANSPORTATION SELF-GOVERNANCE**
2 **PROGRAM.**

3 (a) IN GENERAL.—Chapter 2 of title 23, United
4 States Code, is amended by inserting after section 206 the
5 following:

6 **“§ 207. Tribal transportation self-governance pro-**
7 **gram**

8 “(a) ESTABLISHMENT.—Subject to the requirements
9 of this section, the Secretary shall establish and carry out
10 a program to be known as the tribal transportation self-
11 governance program. The Secretary may delegate respon-
12 sibilities for administration of the program as the Sec-
13 retary determines appropriate.

14 “(b) ELIGIBILITY.—

15 “(1) IN GENERAL.—An Indian tribe shall be eli-
16 gible to participate in the program if the Indian
17 tribe—

18 “(A) requests participation in the program
19 by resolution or other official action by the gov-
20 erning body of the Indian tribe; and

21 “(B) demonstrates, for the preceding 3 fis-
22 cal years, financial stability and financial man-
23 agement capability.

24 “(2) CRITERIA FOR DETERMINING FINANCIAL
25 STABILITY AND FINANCIAL MANAGEMENT CAPAC-
26 ITY.—For the purposes of paragraph (1)(B), evi-

1 dence that, during the preceding 3 fiscal years, an
2 Indian tribe had no uncorrected significant and ma-
3 terial audit exceptions in the required annual audit
4 of the Indian tribe's self-determination contracts or
5 self-governance funding agreements with any Fed-
6 eral agency shall be conclusive evidence of the re-
7 quired stability and capability.

8 “(c) COMPACTS.—

9 “(1) COMPACT REQUIRED.—Upon the request
10 of an eligible Indian tribe, and subject to the re-
11 quirements of this section, the Secretary shall nego-
12 tiate and enter into a written compact with the In-
13 dian tribe for the purpose of providing for the par-
14 ticipation of the Indian tribe in the program.

15 “(2) CONTENTS.—A compact entered into
16 under paragraph (1) shall set forth the general
17 terms of the government-to-government relationship
18 between the Indian tribe and the United States
19 under the program and other terms that will con-
20 tinue to apply in future fiscal years.

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

25 “(d) ANNUAL FUNDING AGREEMENTS.—

1 “(1) FUNDING AGREEMENT REQUIRED.—After
2 entering into a compact with an Indian tribe under
3 subsection (c), the Secretary shall negotiate and
4 enter into a written annual funding agreement with
5 the Indian tribe.

6 “(2) CONTENTS.—

7 “(A) IN GENERAL.—

8 “(i) DISCRETIONARY AND COMPETI-
9 TIVE GRANTS.—A funding agreement en-
10 tered into with an Indian tribe shall au-
11 thorize the Indian tribe, as determined by
12 the Indian tribe, to plan, conduct, consoli-
13 date, administer, and receive full tribal
14 share funding and funding to tribes from
15 discretionary and competitive grants ad-
16 ministered by the Department for all pro-
17 grams, services, functions, and activities
18 (or portions thereof) that are made avail-
19 able to Indian tribes to carry out tribal
20 transportation programs and programs,
21 services, functions, and activities (or por-
22 tions thereof) administered by the Sec-
23 retary that are otherwise available to In-
24 dian tribes.

25 “(ii) TRANSFERS OF STATE FUNDS.—

1 “(I) INCLUSION OF TRANS-
2 FERRED FUNDS IN FUNDING AGREE-
3 MENT.—A funding agreement entered
4 into with an Indian tribe shall include
5 Federal-aid funds apportioned to a
6 State under chapter 1 if the State
7 elects to provide a portion of such
8 funds to the Indian tribe for a project
9 eligible under section 202(a).

10 “(II) METHOD FOR TRANS-
11 FERS.—If a State elects to provide
12 funds described in subclause (I) to an
13 Indian tribe, the State shall transfer
14 the funds back to the Secretary and
15 the Secretary shall transfer the funds
16 to the Indian tribe in accordance with
17 this section.

18 “(III) RESPONSIBILITY FOR
19 TRANSFERRED FUNDS.—Notwith-
20 standing any other provision of law, if
21 a State provides funds described in
22 subclause (I) to an Indian tribe—

23 “(aa) the State shall not be
24 responsible for constructing or
25 maintaining a project carried out

1 using the funds or for admin-
2 istering or supervising the project
3 or funds during the applicable
4 statute of limitations period re-
5 lated to the construction of the
6 project; and

7 “(bb) the Indian tribe shall
8 be responsible for constructing
9 and maintaining a project carried
10 out using the funds and for ad-
11 ministering and supervising the
12 project and funds in accordance
13 with this section during the ap-
14 plicable statute of limitations pe-
15 riod related to the construction of
16 the project.

17 “(B) ADMINISTRATION OF TRIBAL
18 SHARES.—The tribal shares referred to in sub-
19 paragraph (A) shall be provided without regard
20 to the agency or office of the Department with-
21 in which the program, service, function, or ac-
22 tivity (or portion thereof) is performed.

23 “(C) FLEXIBLE AND INNOVATIVE FINANC-
24 ING.—

1 “(i) IN GENERAL.—A funding agree-
2 ment entered into with an Indian tribe
3 under paragraph (1) shall include provi-
4 sions pertaining to flexible and innovative
5 financing if agreed upon by the parties.

6 “(ii) TERMS AND CONDITIONS.—

7 “(I) AUTHORITY TO ISSUE REGU-
8 LATIONS.—The Secretary may issue
9 regulations to establish the terms and
10 conditions relating to the flexible and
11 innovative financing provisions re-
12 ferred to in clause (i).

13 “(II) TERMS AND CONDITIONS IN
14 ABSENCE OF REGULATIONS.—If the
15 Secretary does not issue regulations
16 under subclause (I), the terms and
17 conditions relating to the flexible and
18 innovative financing provisions re-
19 ferred to in clause (i) shall be con-
20 sistent with—

21 “(aa) agreements entered
22 into by the Department under—

23 “(AA) section
24 202(d)(5), as in effect be-
25 fore the date of enactment

1 of MAP-21 (Public Law
2 112-141); and
3 “(BB) section
4 202(b)(7); or
5 “(bb) regulations of the De-
6 partment of the Interior relating
7 to flexible financing contained in
8 part 170 of title 25, Code of
9 Federal Regulations, as in effect
10 on the date of enactment of the
11 Tribal Transportation Self-Gov-
12 ernance Act of 2015.

13 “(3) DISCRETIONARY AND COMPETITIVE
14 GRANTS.—Notwithstanding any other provision of
15 law, an Indian tribe shall be eligible to directly apply
16 for and receive the discretionary and competitive
17 grants made available under transportation pro-
18 grams that States or political subdivisions of States
19 are eligible to apply for and receive.

20 “(4) TERMS.—A funding agreement shall set
21 forth—

22 “(A) terms that generally identify the pro-
23 grams, services, functions, and activities (or
24 portions thereof) to be performed or adminis-
25 tered by the Indian tribe; and

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

3 “(i) the general budget category as-
4 signed;

5 “(ii) the funds to be provided, includ-
6 ing those funds to be provided on a recur-
7 ring basis;

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

10 “(iv) the responsibilities of the Sec-
11 retary and the Indian tribe; and

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

14 “(5) SUBSEQUENT FUNDING AGREEMENTS.—

15 “(A) APPLICABILITY OF EXISTING AGREE-
16 MENT.—Absent notification from an Indian
17 tribe that the Indian tribe is withdrawing from
18 or retroceding the operation of one or more pro-
19 grams, services, functions, or activities (or por-
20 tions thereof) identified in a funding agreement,
21 or unless otherwise agreed to by the parties,
22 each funding agreement shall remain in full
23 force and effect until a subsequent funding
24 agreement is executed.

1 “(B) EFFECTIVE DATE OF SUBSEQUENT
2 AGREEMENT.—The terms of the subsequent
3 funding agreement shall be retroactive to the
4 end of the term of the preceding funding agree-
5 ment.

6 “(6) CONSENT OF INDIAN TRIBE REQUIRED.—
7 The Secretary shall not revise, amend, or require ad-
8 ditional terms in a new or subsequent funding agree-
9 ment without the consent of the Indian tribe that is
10 subject to the agreement unless such terms are re-
11 quired by Federal law.

12 “(e) GENERAL PROVISIONS.—

13 “(1) REDESIGN AND CONSOLIDATION.—

14 “(A) IN GENERAL.—An Indian tribe, in
15 any manner that the Indian tribe considers to
16 be in the best interest of the Indian community
17 being served, may—

18 “(i) redesign or consolidate programs,
19 services, functions, and activities (or por-
20 tions thereof) included in a funding agree-
21 ment; and

22 “(ii) reallocate or redirect funds for
23 such programs, services, functions, and ac-
24 tivities (or portions thereof), if the funds
25 are—

1 “(I) expended on projects identi-
2 fied in a transportation improvement
3 program approved by the Secretary;
4 and

5 “(II) used in accordance with ap-
6 propriations Acts and other applicable
7 statutory limitations.

8 “(B) EXCEPTION.—Notwithstanding sub-
9 paragraph (A), if, pursuant to subsection (d),
10 an Indian tribe receives a discretionary or com-
11 petitive grant from the Secretary or receives
12 State apportioned funds, the Indian tribe shall
13 use the funds for the purpose for which the
14 funds were originally authorized.

15 “(2) RETROCESSION.—

16 “(A) IN GENERAL.—

17 “(i) AUTHORITY OF INDIAN TRIBES.—
18 An Indian tribe may retrocede (fully or
19 partially) to the Secretary programs, serv-
20 ices, functions, or activities (or portions
21 thereof) included in a compact or funding
22 agreement.

23 “(ii) REASSUMPTION OF REMAINING
24 FUNDS.—Following a retrocession de-
25 scribed in clause (i), the Secretary may—

1 “(I) reassume the remaining
2 funding associated with the retroceded
3 programs, functions, services, and ac-
4 tivities (or portions thereof) included
5 in the applicable compact or funding
6 agreement;

7 “(II) out of such remaining
8 funds, transfer funds associated with
9 Department of Interior programs,
10 services, functions, or activities (or
11 portions thereof) to the Secretary of
12 the Interior to carry out transpor-
13 tation services provided by the Sec-
14 retary of the Interior; and

15 “(III) distribute funds not trans-
16 ferred under subclause (II) in accord-
17 ance with applicable law.

18 “(iii) CORRECTION OF PROGRAMS.—If
19 the Secretary makes a finding under sub-
20 section (f)(2)(B) and no funds are avail-
21 able under subsection (f)(2)(A)(ii), the
22 Secretary shall not be required to provide
23 additional funds to complete or correct any
24 programs, functions, services, or activities
25 (or portions thereof).

1 “(B) EFFECTIVE DATE.—Unless the In-
2 dian tribe rescinds a request for retrocession,
3 the retrocession shall become effective within
4 the timeframe specified by the parties in the
5 compact or funding agreement. In the absence
6 of such a specification, the retrocession shall
7 become effective on—

8 “(i) the earlier of—

9 “(I) 1 year after the date of sub-
10 mission of the request; or

11 “(II) the date on which the fund-
12 ing agreement expires; or

13 “(ii) such date as may be mutually
14 agreed upon by the parties and, with re-
15 spect to Department of the Interior pro-
16 grams, functions, services, and activities
17 (or portions thereof), the Secretary of the
18 Interior.

19 “(f) PROVISIONS RELATING TO THE SECRETARY.—

20 “(1) DECISIONMAKER.—A decision that con-
21 stitutes a final agency action and relates to an ap-
22 peal of the rejection of a final offer by the Depart-
23 ment shall be made either—

24 “(A) by an official of the Department who
25 holds a position at a higher organizational level

1 within the Department than the level of the de-
2 partmental agency in which the decision that is
3 the subject of the appeal was made; or

4 “(B) by an administrative judge.

5 “(2) TERMINATION OF COMPACT OR FUNDING
6 AGREEMENT.—

7 “(A) AUTHORITY TO TERMINATE.—

8 “(i) PROVISION TO BE INCLUDED IN
9 COMPACT OR FUNDING AGREEMENT.—A
10 compact or funding agreement shall in-
11 clude a provision authorizing the Sec-
12 retary, if the Secretary makes a finding de-
13 scribed in subparagraph (B), to—

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

17 “(II) reassume the remaining
18 funding associated with the reassumed
19 programs, functions, services, and ac-
20 tivities included in the compact or
21 funding agreement.

22 “(ii) TRANSFERS OF FUNDS.—Out of
23 any funds reassumed under clause (i)(II),
24 the Secretary may transfer the funds asso-
25 ciated with Department of the Interior

1 programs, functions, services, and activi-
2 ties (or portions thereof) to the Secretary
3 of the Interior to provide continued trans-
4 portation services in accordance with appli-
5 cable law.

6 “(B) FINDINGS RESULTING IN TERMI-
7 NATION.—The finding referred to in subpara-
8 graph (A) is a specific finding of—

9 “(i) imminent jeopardy to a trust
10 asset, natural resources, or public health
11 and safety that is caused by an act or
12 omission of the Indian tribe and that
13 arises out of a failure to carry out the
14 compact or funding agreement, as deter-
15 mined by the Secretary; or

16 “(ii) gross mismanagement with re-
17 spect to funds or programs transferred to
18 the Indian tribe under the compact or
19 funding agreement, as determined by the
20 Secretary in consultation with the Inspec-
21 tor General of the Department, as appro-
22 priate.

23 “(C) PROHIBITION.—The Secretary shall
24 not terminate a compact or funding agreement
25 (or portion thereof) unless—

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

5 “(ii) the Indian tribe has not taken
6 corrective action to remedy the mis-
7 management of funds or programs or the
8 imminent jeopardy to a trust asset, natural
9 resource, or public health and safety.

10 “(D) EXCEPTION.—

11 “(i) IN GENERAL.—Notwithstanding
12 subparagraph (C), the Secretary, upon
13 written notification to an Indian tribe that
14 is subject to a compact or funding agree-
15 ment, may immediately terminate the com-
16 pact or funding agreement (or portion
17 thereof) if—

18 “(I) the Secretary makes a find-
19 ing of imminent substantial and irrep-
20 arable jeopardy to a trust asset, nat-
21 ural resource, or public health and
22 safety; and

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

1 “(ii) HEARINGS.—If the Secretary
2 terminates a compact or funding agree-
3 ment (or portion thereof) under clause (i),
4 the Secretary shall provide the Indian tribe
5 subject to the compact or agreement with
6 a hearing on the record not later than 10
7 days after the date of such termination.

8 “(E) BURDEN OF PROOF.—In any hearing
9 or appeal involving a decision to terminate a
10 compact or funding agreement (or portion
11 thereof) under this paragraph, the Secretary
12 shall have the burden of proof in demonstrating
13 by clear and convincing evidence the validity of
14 the grounds for the termination.

15 “(g) COST PRINCIPLES.—In administering funds re-
16 ceived under this section, an Indian tribe shall apply cost
17 principles under the applicable Office of Management and
18 Budget circular, except as modified by section 450j–1 of
19 title 25, other provisions of law, or by any exemptions to
20 applicable Office of Management and Budget circulars
21 subsequently granted by the Office of Management and
22 Budget. No other audit or accounting standards shall be
23 required by the Secretary. Any claim by the Federal Gov-
24 ernment against the Indian tribe relating to funds received
25 under a funding agreement based on any audit conducted

1 pursuant to this subsection shall be subject to the provi-
2 sions of section 450j–1(f) of title 25.

3 “(h) TRANSFER OF FUNDS.—The Secretary shall
4 provide funds to an Indian tribe under a funding agree-
5 ment in an amount equal to—

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

11 “(2) such additional amounts as the Secretary
12 determines equal the amounts that would have been
13 withheld for the costs of the Bureau of Indian Af-
14 fairs for administration of the program or project.

15 “(i) CONSTRUCTION PROGRAMS.—

16 “(1) STANDARDS.—Construction projects car-
17 ried out under programs administered by an Indian
18 tribe with funds transferred to the Indian tribe pur-
19 suant to a funding agreement entered into under
20 this section shall be constructed pursuant to the con-
21 struction program standards set forth in applicable
22 regulations or as specifically approved by the Sec-
23 retary (or the Secretary’s designee).

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

4 “(j) FACILITATION.—

5 “(1) SECRETARIAL INTERPRETATION.—Except
6 as otherwise provided by law, the Secretary shall in-
7 terpret all Federal laws, Executive orders, and regu-
8 lations in a manner that will facilitate—

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

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

15 “(2) REGULATION WAIVER.—

16 “(A) IN GENERAL.—An Indian tribe may
17 submit to the Secretary a written request to
18 waive application of a regulation promulgated
19 under this section with respect to a compact or
20 funding agreement. The request shall identify
21 the regulation sought to be waived and the
22 basis for the request.

23 “(B) APPROVALS AND DENIALS.—

24 “(i) IN GENERAL.—Not later than 90
25 days after the date of receipt of a written

1 request under subparagraph (A), the Sec-
2 retary shall approve or deny the request in
3 writing.

4 “(ii) DENIALS.—The Secretary may
5 deny a request under clause (i) only if the
6 Secretary finds that the identified lan-
7 guage in the regulation may not be waived
8 because the waiver is prohibited by Federal
9 law.

10 “(iii) DEEMED APPROVAL.—If the
11 Secretary does not approve or deny a re-
12 quest submitted under subparagraph (A)
13 on or before the last day of the 90-day pe-
14 riod referred to in clause (i), the request
15 shall be deemed approved.

16 “(iv) FINALITY OF DECISIONS.—A de-
17 cision by the Secretary under this subpara-
18 graph shall be final for the Department.

19 “(k) DISCLAIMERS.—

20 “(1) EXISTING AUTHORITY.—Notwithstanding
21 any other provision of law, upon the election of an
22 Indian tribe, the Secretary shall—

23 “(A) maintain current Federal Highway
24 Administration Indian reservation roads pro-
25 gram and funding agreements; or

1 “(B) enter into new agreements under the
2 authority of section 202(b)(7).

3 “(2) LIMITATION ON STATUTORY CONSTRUC-
4 TION.—Nothing in this section may be construed to
5 impair or diminish the authority of the Secretary
6 under section 202(b)(7).

7 “(1) APPLICABILITY OF INDIAN SELF-DETERMINA-
8 TION AND EDUCATION ASSISTANCE ACT.—Except to the
9 extent in conflict with this section (as determined by the
10 Secretary), the following provisions of the Indian Self-De-
11 termination and Education Assistance Act shall apply to
12 compact and funding agreements (except that any ref-
13 erence to the Secretary of the Interior or the Secretary
14 of Health and Human Services in such provisions shall
15 treated as a reference to the Secretary of Transportation):

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

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

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

1 “(4) Section 510 of such Act (25 U.S.C.
2 458aaa–9), relating to Federal procurement laws
3 and regulations.

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

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

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

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

18 “(9) Section 518 of such Act (25 U.S.C.
19 458aaa–17), relating to appeals.

20 “(m) DEFINITIONS.—

21 “(1) IN GENERAL.—In this section, the fol-
22 lowing definitions apply (except as otherwise ex-
23 pressly provided):

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

4 “(B) DEPARTMENT.—The term ‘Depart-
5 ment’ means the Department of Transpor-
6 tation.

7 “(C) ELIGIBLE INDIAN TRIBE.—The term
8 ‘eligible Indian tribe’ means an Indian tribe
9 that is eligible to participate in the program, as
10 determined under subsection (b).

11 “(D) FUNDING AGREEMENT.—The term
12 ‘funding agreement’ means a funding agree-
13 ment between the Secretary and an Indian tribe
14 entered into under subsection (d).

15 “(E) INDIAN TRIBE.—The term ‘Indian
16 tribe’ means any Indian or Alaska Native tribe,
17 band, nation, pueblo, village, or community that
18 the Secretary of the Interior acknowledges to
19 exist as an Indian tribe under the Federally
20 Recognized Indian Tribe List Act of 1994 (25
21 U.S.C. 479a). In any case in which an Indian
22 tribe has authorized another Indian tribe, an
23 inter-tribal consortium, or a tribal organization
24 to plan for or carry out programs, services,
25 functions, or activities (or portions thereof) on

1 its behalf under this part, the authorized Indian
2 tribe, inter-tribal consortium, or tribal organiza-
3 tion shall have the rights and responsibilities of
4 the authorizing Indian tribe (except as other-
5 wise provided in the authorizing resolution or in
6 this title). In such event, the term ‘Indian tribe’
7 as used in this part shall include such other au-
8 thorized Indian tribe, inter-tribal consortium, or
9 tribal organization.

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

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

15 “(H) TRANSPORTATION PROGRAMS.—The
16 term ‘transportation programs’ means all pro-
17 grams administered or financed by the Depart-
18 ment under this title and chapter 53 of title 49.

19 “(2) APPLICABILITY OF OTHER DEFINITIONS.—

20 In this section, the definitions set forth in sections
21 4 and 505 of the Indian Self-Determination and
22 Education Assistance Act (25 U.S.C. 450b; 458aaa)
23 apply, except as otherwise expressly provided in this
24 section.

25 “(n) REGULATIONS.—

1 “(1) IN GENERAL.—

2 “(A) PROMULGATION.—Not later than 90
3 days after the date of enactment of the Tribal
4 Transportation Self-Governance Act of 2015,
5 the Secretary shall initiate procedures under
6 subchapter III of chapter 5 of title 5 to nego-
7 tiate and promulgate such regulations as are
8 necessary to carry out this section.

9 “(B) PUBLICATION OF PROPOSED REGULA-
10 TIONS.—Proposed regulations to implement this
11 section shall be published in the Federal Reg-
12 ister by the Secretary not later than 21 months
13 after such date of enactment.

14 “(C) EXPIRATION OF AUTHORITY.—The
15 authority to promulgate regulations under para-
16 graph (1) shall expire 30 months after such
17 date of enactment.

18 “(D) EXTENSION OF DEADLINES.—A
19 deadline set forth in paragraph (1)(B) or (1)(C)
20 may be extended up to 180 days if the nego-
21 tiated rulemaking committee referred to in
22 paragraph (2) concludes that the committee
23 cannot meet the deadline and the Secretary so
24 notifies the appropriate committees of Con-
25 gress.

1 “(2) COMMITTEE.—

2 “(A) IN GENERAL.—A negotiated rule-
3 making committee established pursuant to sec-
4 tion 565 of title 5 to carry out this subsection
5 shall have as its members only Federal and
6 tribal government representatives, a majority of
7 whom shall be nominated by and be representa-
8 tives of Indian tribes with funding agreements
9 under this title.

10 “(B) REQUIREMENTS.—The committee
11 shall confer with, and accommodate participa-
12 tion by, representatives of Indian tribes, inter-
13 tribal consortia, tribal organizations, and indi-
14 vidual tribal members.

15 “(C) ADAPTATION OF PROCEDURES.—The
16 Secretary shall adapt the negotiated rulemaking
17 procedures to the unique context of self-govern-
18 ance and the government-to-government rela-
19 tionship between the United States and Indian
20 tribes.

21 “(3) EFFECT.—The lack of promulgated regu-
22 lations shall not limit the effect of this section.

23 “(4) EFFECT OF CIRCULARS, POLICIES, MANU-
24 ALS, GUIDANCE, AND RULES.—Unless expressly
25 agreed to by the participating Indian tribe in the

1 compact or funding agreement, the participating In-
2 dian tribe shall not be subject to any agency cir-
3 cular, policy, manual, guidance, or rule adopted by
4 the Department of Transportation, except regula-
5 tions promulgated under this section.”.

6 (b) CLERICAL AMENDMENT.—The analysis for such
7 chapter is amended by inserting after the item relating
8 to section 206 the following:

“207. Tribal transportation self-governance program.”.

