

October 3, 2008

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**FOR DISCUSSION PURPOSES ONLY**

**TRIBAL TRANSPORTATION PROVISIONS  
PROPOSED FOR INCLUSION IN THE  
HIGHWAY REAUTHORIZATION LEGISLATION**

**BY THE  
NATIONAL CONGRESS OF AMERICAN INDIANS AND THE  
INTERTRIBAL TRANSPORTATION ASSOCIATION  
JOINT TASK FORCE ON TRIBAL TRANSPORTATION**

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The tribal transportation provisions in this document are offered as draft legislation implementing the proposals included in the NCAI-ITA White Paper on tribal transportation. The language offered here is in draft form, and we fully expect that it will undergo significant revisions over the next several months in response to tribal comments. Comments are most welcome and should be sent to Gwen Salt of NCAI at [gsalt@ncai.org](mailto:gsalt@ncai.org), and Jen Thomas and Jim Glaze of Sonosky, Chambers, Sachse, Endreson & Perry, LLP at [jthomas@sonosky.com](mailto:jthomas@sonosky.com) and [jglaze@sonosky.com](mailto:jglaze@sonosky.com).

Explanation of the formatting of this document:

The left column is the NCAI-ITA Joint Task Force proposed bill language. For ease of reference, for programs that already exist, section numbers in the NCAI-ITA Joint Task Force proposed bill correspond to section numbers used in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-59 (2005). The NCAI-ITA Joint Task Force has used section number “xx” for new programs or for sections with no corresponding section in SAFETEA-LU.

The right column of this document is a redlined version indicating the effect of the proposed bill language on SAFETEA-LU or, as appropriate, on transportation legislation codified at title 23, United States Code and chapter 53 of title 49, United States Code. Additions are underscored and deletions are struck through.

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<u>Proposed Legislation</u>	<u>Redline comparison with SAFETEA-LU or with transportation legislation codified at title 23, United States Code and chapter 53 of title 49, United States Code</u>
<p><b>Section 1101. AUTHORIZATION OF APPROPRIATIONS</b></p> <p>(a) IN GENERAL. —The following sums are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account):</p> <p style="text-align: center;">*****</p> <p>(9) FEDERAL LANDS HIGHWAYS PROGRAM.—</p> <p style="padding-left: 40px;">(A) INDIAN RESERVATION ROADS.—For Indian reservation roads under section 204 of title 23, United States Code—</p> <p style="padding-left: 80px;">(i) \$800,000,000 for fiscal year 2010;<sup>1</sup>  (ii) \$850,000,000 for fiscal year 2011;  (iii) \$900,000,000 for fiscal year 2012;  (iv) \$950,000,000 for fiscal year 2013;  (v) \$1,000,000,000 for fiscal year 2014; and  (vi) \$1,050,000,000 for fiscal year 2015.</p>	<p><b>SAFETEA-LU, Section 1101(a)(9)(A) to read:</b></p> <p><b>Section 1101. AUTHORIZATION OF APPROPRIATIONS</b></p> <p>(a) IN GENERAL. —The following sums are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account):</p> <p style="text-align: center;">*****</p> <p>(9) FEDERAL LANDS HIGHWAYS PROGRAM.—</p> <p style="padding-left: 40px;">(A) INDIAN RESERVATION ROADS.—For Indian reservation roads under section 204 of title 23, United States Code—</p> <p style="padding-left: 80px;"><del>(i) \$300,000,000 for fiscal year 2005;</del>  <del>(ii) \$330,000,000 for fiscal year 2006;</del>  <del>(iii) \$370,000,000 for fiscal year 2007;</del>  <del>(iv) \$410,000,000 for fiscal year 2008; and</del>  <del>(v) \$450,000,000 for fiscal year 2009;</del></p> <p style="padding-left: 80px;">(i) \$800,000,000 for fiscal year 2010;</p>

<sup>1</sup> **Note:** These numbers include an additional \$100 million to account for the Department of the Interior’s failure to fully fund the BIA Road Maintenance Program.

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	<p style="text-align: center;"><u>(ii) \$850,000,000 for fiscal year 2011;</u> <u>(iii) \$900,000,000 for fiscal year 2012;</u> <u>(iv) \$950,000,000 for fiscal year 2013;</u> <u>(v) \$1,000,000,000 for fiscal year 2014; and</u> <u>(vi) \$1,050,000,000 for fiscal year 2015.</u></p>
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**Rationale:** According to testimony at a recent Congressional hearing, transportation infrastructure serving tribal communities and tribal communities is the most unsafe, rudimentary and under-maintained transportation network in the country. Senate Indian Affairs Committee Chairman Byron Dorgan noted that the majority of roads that serve tribal communities are unsafe and unreliable, with motor vehicle accidents the leading cause of death for Native Americans ages 1-34 and the third leading cause of death overall for Native Americans. These deplorable conditions are a result of the nearly \$40 billion construction backlog and the huge maintenance backlog for tribal transportation facilities. Notwithstanding this maintenance backlog, the Department of the Interior – the agency with primary responsibility for maintaining Indian reservation roads – has consistently failed to request funding sufficient to cover even its own estimate of the annual funds needed to adequately maintain these routes.

To address this backlog, this section increases funding for the IRR Program to \$800 million for FY 2010 with stepped increases of \$50 million for every year thereafter. In addition to helping tribes make modest headway into addressing the large unmet transportation needs of tribal communities, these funds can be used by tribes for road maintenance. This funding increase will allow tribes to begin to address the huge road maintenance backlog that has resulted from the Department of the Interior’s multi-year failure to request funding sufficient to meet the Department’s obligation to maintain Indian reservation roads.

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<p><b>Section 1101. AUTHORIZATION OF APPROPRIATIONS</b></p> <p>(a) IN GENERAL. —The following sums are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account):</p> <p style="text-align: center;">*****</p> <p>(9) FEDERAL LANDS HIGHWAYS PROGRAM.—</p> <p style="text-align: center;">*****</p> <p>(XX) INDIAN RESERVATION ROAD BRIDGE PROGRAM.—For the Indian reservation road bridge program under Section 202(d)(4) of such title—</p> <p>(i) \$75,000,000 for fiscal year 2010; (ii) \$87,500,000 for fiscal year 2011; (iii) \$100,000,000 for fiscal year 2012; (iv) \$100,000,000 for fiscal year 2013; (v) \$100,000,000 for fiscal year 2014; and (vi) \$100,000,000 for fiscal year 2015.</p>	<p><b>SAFETEA-LU, Section 1101(a)(9)(xx) to read:</b></p> <p><b>Section 1101. AUTHORIZATION OF APPROPRIATIONS</b></p> <p>(a) IN GENERAL. —The following sums are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account):</p> <p style="text-align: center;">*****</p> <p>(9) FEDERAL LANDS HIGHWAYS PROGRAM.—</p> <p style="text-align: center;">*****</p> <p><u>(XX) INDIAN RESERVATION ROAD BRIDGE PROGRAM.—For the Indian reservation road bridge program under Section 202(d)(4) of such title—</u></p> <p>(i) <u>\$75,000,000 for fiscal year 2010;</u> (ii) <u>\$87,500,000 for fiscal year 2011;</u> (iii) <u>\$100,000,000 for fiscal year 2012;</u> (iv) <u>\$100,000,000 for fiscal year 2013;</u> (v) <u>\$100,000,000 for fiscal year 2014; and</u> (vi) <u>\$100,000,000 for fiscal year 2015.</u></p>
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**Rationale:** Approximately 1,069 of 4,400 IRR Program bridges are currently rated as deficient. The cost of rehabilitating or replacing the 1,069 deficient IRR bridges is likely to exceed \$595 million. To make inroads into rehabilitating or replacing these

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deficient bridges, the Joint Task Force proposes increased funding for the IRR Bridge Program to \$75 million for FY 2010, \$87.5 million for FY 2011 and \$100 million for FY 2012-2015.

In SAFETEA-LU, the authorization of appropriations for this program was located in Section 1119(g) (codified at section 202(d)(4) of title 23, United States Code). This section moves the authorization of appropriations for this program to the Federal Lands Highways appropriations authorization, and thereby brings it into conformity with other Federal Lands Highway programs.

<p><b>Section 1101. AUTHORIZATION OF APPROPRIATIONS</b></p> <p>(a) IN GENERAL. —The following sums are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account):</p> <p style="text-align: center;">*****</p> <p>(9) FEDERAL LANDS HIGHWAYS PROGRAM.—</p> <p style="text-align: center;">*****</p> <p>(XX) <b>[NEW PROGRAM]</b> FEDERAL LANDS HIGHWAY TRIBAL TRANSPORTATION SAFETY PROGRAM.—For the tribal transportation safety program under section 202(d)(6) of such title \$50,000,000 for each of fiscal years 2010 through 2015.</p>	<p><b>SAFETEA-LU, Section 1101(a)(9)(xx) to read:</b></p> <p><b>Section 1101. AUTHORIZATION OF APPROPRIATIONS</b></p> <p>(a) IN GENERAL. —The following sums are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account):</p> <p style="text-align: center;">*****</p> <p>(9) FEDERAL LANDS HIGHWAYS PROGRAM.—</p> <p style="text-align: center;">*****</p> <p><u>(XX) <b>[NEW PROGRAM]</b> FEDERAL LANDS HIGHWAY TRIBAL TRANSPORTATION SAFETY PROGRAM.—For the tribal transportation safety program under section 202(d)(6) of such title \$50,000,000 for each of fiscal years 2010 through 2015.</u></p>
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**Rationale:** American Indians and Alaska Natives suffer injury and death driving and walking along roadways in tribal communities at rates far above the national average. American Indians and Alaska Natives also have the highest rates of pedestrian injury and death per capita of any racial or ethnic group in the United States. Drawing on proposals advanced by the current Administration during the previous highway reauthorization process, the Joint Task Force proposes creating a Federal Lands Highway Tribal Transportation Safety Program funded at \$50 million annually to address roadway structural and design flaws that contribute to these unacceptably high rates of injury and death on roadways serving tribal communities.

<p><b>Section 1102. OBLIGATION CEILING</b></p> <p>(b) OBLIGATION CEILING.—Section 1102 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), 119 Stat. 1157-119 Stat. 1158, is amended in subparagraph (b) by striking “and” at the end of clause (10), by striking “.” at the end of clause (11), by inserting “; and” at the end of clause (11) and by adding at the end the following:</p> <p>“(12) subsection (d) of section 202 of title 23, United States Code.”</p>	<p><b>SAFETEA-LU, Section 1102(b) to read:</b></p> <p>(b) EXCEPTIONS.--The limitations under subsection (a) shall not apply to obligations under or for—</p> <p>(1) section 125 of title 23, United States Code;</p> <p>***</p> <p>(10) section 105 of title 23, United States Code (but, for each of fiscal years 2005 through 2009, only in an amount equal to \$639,000,000 per fiscal year); <del>and</del></p> <p>(11) section 1603 of this Act, to the extent that funds obligated in accordance with that section were not subject to a limitation on obligations at the time at which the funds were initially made available for obligation-; <u>and</u></p> <p><u>(12) subsection (d) of section 202 of title 23, United States Code.</u></p>
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**Rationale:** The obligation limitation is a financing mechanism that deducts a certain percentage of funds (approximately 6%-15% in years past) each fiscal year from the Federal-Aid Program and the Federal Lands Highways Program (which includes the IRR Program and the IRR Bridge Program). Prior to the passage of the Transportation Equity Act of the 21<sup>st</sup> Century (TEA-21), the Federal Lands Highways Program was exempt from this obligation limitation annual deduction. The inclusion of the Federal Lands Highways Program, including the IRR and IRR Bridge Programs, in the obligation limitation results in the loss of millions of dollars of otherwise authorized and much-needed tribal transportation funds every year. This provision would reinstate the exemption for tribal transportation programs and would thereby assure that the IRR Program, the IRR Bridge Program and the proposed Federal Lands Highway Tribal Transportation Safety Program are funded at their full authorized levels.

**Section 1112. EMERGENCY RELIEF**

(XX) TRIBAL TRANSPORTATION FACILITIES.—Section 125(e) of such title is amended by adding at the end the following:

“Notwithstanding any other provision of law, regulation, policy or guideline, including threshold levels for determining eligibility for assistance under this section, tribal governments may submit applications for emergency relief funding for the repair or reconstruction of public transportation facilities which are owned or maintained by tribal governments or the Bureau of Indian Affairs directly to the Secretary of Transportation. The Secretary shall process tribal applications in the same manner as applications from federal agencies are processed. The Secretary shall develop criteria for tribal emergency relief funding applications, including appropriate eligibility thresholds, under this subsection pursuant to regulations issued in accordance with section 202(d)(8) (negotiated rulemaking).”

**23 U.S.C. § 125(e) to read:**

(e) The Secretary may expend funds from the emergency fund herein authorized, either independently or in cooperation with any other branch of the Government, State agency, organization, or person, for the repair or reconstruction of forest highways, forest development roads and trails, park roads and trails, parkways, public lands highways, public lands development roads and trails, and Indian reservation roads, whether or not such highways, roads, or trails are Federal-aid highways. Notwithstanding any other provision of law, regulations, policy or guideline, including threshold levels for determining eligibility for assistance under this section, tribal governments may submit applications for emergency relief funding for the repair or reconstruction of public transportation facilities which are owned or maintained by tribal governments or the Bureau of Indian Affairs directly to the Secretary of Transportation. The Secretary shall process tribal applications in the same manner as applications from federal agencies are processed. The Secretary shall develop criteria for

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	<u>tribal emergency relief funding applications, including appropriate eligibility thresholds under this subsection pursuant to regulations issued in accordance with section 202(d)(8) (negotiated rulemaking).</u>
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**Rationale:** To obtain emergency relief funding under the Emergency Relief for Federally Owned Roads (ERFO) Program, the Federal Highway Administration has imposed a disaster dollar threshold of \$700,000 and requires Indian tribal governments to apply through the Department of the Interior rather than directly to the Federal Highway Administration. Because tribal roads are often narrow gravel and dirt roads, emergency repair costs are – in comparison with those for other federally-owned roads – relatively low and the damage threshold often cannot be met. Even when tribal roads are nearly destroyed by natural disasters, the damage threshold can render otherwise meritorious funding requests ineligible for ERFO funds, depriving Indian tribal governments of much needed emergency funding. The proposed provision requires that an appropriate damage threshold be set during a negotiated rulemaking and streamlines the ERFO application process by authorizing tribes to submit applications directly to the Federal Highway Administration.

<p><b>Section 1119. FEDERAL LANDS HIGHWAYS</b></p> <p>(c) ALLOCATIONS.—Section 202(d)(2) of such title is amended in subparagraph (E) by inserting at the end the following:</p> <p>“(iii) Cause of action.—</p> <p>“(I) In general.--The Secretary of the Interior’s failure to distribute funds in accordance with subparagraph (i) constitutes a cause of action against the United States. The district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, over any civil action or claims against the United States founded upon this paragraph.</p>	<p><b>23 U.S.C. § 202(d)(1)(E) to read:</b></p> <p>(E) Transferred funds.--</p> <p>(i) In general.--Not later than 30 days after the date on which funds are made available to the Secretary of the Interior under this paragraph, the funds shall be distributed to, and available for immediate use by, the eligible Indian tribes, in accordance with the formula for distribution of funds under the Indian reservation roads program.</p> <p>(ii) Use of funds.--Notwithstanding any other provision of this section, funds available to Indian tribes for Indian reservation roads shall be expended on projects identified in a transportation improvement program approved by the Secretary.</p>
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“(II) Interest.—Notwithstanding any other provision of law, in any judgment of any court rendered against the United States, for failure to distribute funds made available under this paragraph to an eligible Indian tribe within thirty days after the date on which such funds are made available to the Secretary of the Interior, interest shall be allowed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register from time to time that is in effect on the date the Indian tribe’s right to interest under this subparagraph accrues, from the thirty-first day after the date on which funds were made available to the Secretary of the Interior to the date the funds are received by the Indian tribe.

“(III) Source of funds.—Any judgment or funds awarded under this subparagraph, including any funds awarded by any administrative body, shall be payable from the fund authorized by 31 U.S.C. § 1304 and shall in no event be payable from funds authorized to be appropriated for the Indian Reservation Roads Program.

(iii) Cause of action.—

(I) In general.—The Secretary of the Interior’s failure to distribute funds in accordance with subparagraph (i) constitutes a cause of action against the United States. The district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, over any civil action or claims against the United States founded upon this paragraph.

(II) Interest.— Notwithstanding any other provision of law, in any judgment of any court rendered against the United States, for failure to distribute funds made available under this paragraph to an eligible Indian tribe within thirty days after the date on which such funds are made available to the Secretary of the Interior, interest shall be allowed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register from time to time that is in effect on the date the Indian tribe’s right to interest under this subparagraph accrues, from the thirty-first day after the date on which funds were made available to the Secretary of the Interior to the date the funds are received by the Indian tribe.

(III) Source of funds.—Any judgment or funds awarded under this subparagraph, including any funds awarded by any administrative body, shall be payable from the fund authorized by 31 U.S.C. § 1304 and shall in no event be payable from funds authorized to be appropriated for the Indian Reservation Roads Program.



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<p>“(II) to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions or install scour countermeasures for deficient Indian reservation road bridges, including multiple-pipe and box culverts or to construct new Indian reservation road bridges.</p> <p>“(ii) Planning, survey, design, engineering and preconstruction funds.—</p> <p>“(I) Up to 20 percent of funds authorized to be appropriated for the Indian reservation road bridge program shall be available for planning, survey, design, engineering and preconstruction;</p> <p>“(II) Notwithstanding any other provision of law, up to 20 percent of the estimated total cost of a project eligible for funding under this paragraph shall be available for planning, survey, design, engineering and preconstruction for the project.”</p>	<p>engineering, preconstruction, construction, and inspection of projects</p> <p><u>(I) to construct new bridges; or</u></p> <p><u>(II) to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions or install scour countermeasures for deficient Indian reservation road bridges, including multiple-pipe culverts or to construct new Indian reservation road bridges.</u></p> <p><u>(ii) Planning, survey, design, engineering and preconstruction funds.—</u></p> <p><u>(I) Up to 20 percent of funds authorized to be appropriated for the Indian reservation road bridge program shall be available for planning, survey, design, engineering and preconstruction;</u></p> <p><u>(II) Notwithstanding any other provision of law, up to 20 percent of the estimated construction cost of a project eligible for funding under this paragraph shall be available for planning, survey, design, engineering and preconstruction for the project.</u></p>
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**Rationale:** This section makes four changes to 23 U.S.C. § 202(d)(4).

**First:** This section amends § 202(d)(4) so that the name of the section (currently “Reservation of Funds”) reflects its subject matter “Indian Reservation Road Bridge Program.” This section makes this change to clarify the purpose of the section.

**Second:** This section, in conjunction with Section 1101(a)(9)(E) moves the authorization of appropriations for the Indian Reservation

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Road Bridge Program from §202(d)(4) to the section that authorizes appropriations for Federal Highway programs, thereby bringing the IRR Bridge Program into conformity with those programs.

Third: This section expands eligible uses of IRR bridge program funds to include construction of new IRR bridges. Under current law, this program is intended to fund only the replacement and rehabilitation of existing deficient bridges. But many Indian tribes need new bridges to adequately serve their populations. Given the extremely high cost of constructing new bridges, the IRR Program share of nearly all Indian tribes is insufficient, even when aggregated over several years, to fund the construction of any new bridges. The increase in funding made available for this program under Section 1101(a)(9)(E) of this legislation, coupled with the authorization of the use of funds for the construction of new bridges, is designed to create a funding source that can effectively be used to construct new bridges where such bridges are otherwise eligible for funding.

Fourth: According to the FHWA's Notice of Proposed Rulemaking for this Program, typical preliminary engineering costs are between 15%-20% of a project's construction cost. 72 Fed. Reg. 31015. However, under current regulations, the maximum limit for preliminary engineering is \$150,000. This funding cap means that preliminary engineering is not fully funded for larger bridge projects. This section addresses this problem by providing that up to 20% of the estimated construction cost of an eligible bridge project shall be available for preliminary engineering: planning, survey, design, engineering and preconstruction.

**Section 1119. FEDERAL LANDS HIGHWAYS**

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(g) INDIAN RESERVATION ROAD BRIDGES.—

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(3) CONTRACTS AND AGREEMENTS WITH INDIAN TRIBES.—  
Section 202(d)(5) of such title is amended in subparagraph (A) by striking “this chapter” and inserting “title 23 or chapter 53 of title 49, United States Code”

**23 U.S.C. § 202(d)(5)(A) 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 to an Indian tribal government under ~~this chapter~~ title 23 or chapter 53, title 49, United States Code for a highway, road, bridge, parkway, or transit facility program or project that is located on an Indian reservation or provides access to the reservation or a community of the Indian tribe shall be made available, on the request of the Indian tribal government, to the Indian tribal government for use in carrying

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	out, in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), contracts and agreements for the planning, research, design, engineering, construction, and maintenance relating to the program or project.
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**Rationale:** The Secretary of Transportation has taken the position that 23 U.S.C. § 202(d)(5) only authorizes her to transfer funds to tribes that are authorized under chapter 2 of that title. This means that tribal governments may only access federal transportation funds provided under other chapters of title 23 (such as funds provided under the federal aid program, the National Scenic Byways Program and programs and grants administered by the National Highway Traffic Safety Administration ) through federal and state-administered agreements that have not been developed with tribal governments in mind and that are ill-suited to the unique legal status of tribal governments. The lack of a simple, uniform and tribally appropriate funding agreement prevents millions of dollars in available Federal and State transportation funds from reaching tribal populations every year. This section authorizes the Secretary to enter into direct agreements with tribes under section 202(d)(5) to transfer all funds made available to a tribe under any provision of title 23 or chapter 53 of title 49, United States Code, including federal aid funds that a State makes available to a tribe, National Scenic Byways Grant funds, chapter 4 safety funds and other funds that a tribe may be eligible to receive under title 23, United States Code. This change would have the effect of requiring tribes to meet only a single set of grant and administrative requirements and would therefore significantly streamline tribal efforts to obtain and administer such funds.

**Section 1119. FEDERAL LANDS HIGHWAYS**

(h) PLANNING AND AGENCY COORDINATION.—Section 204(b)(6) is amended to read as follows:

“(6) RESERVATION OF FUNDS.—The Secretary of the Interior shall reserve \$2,100,000 from administrative funds of the Bureau of Indian Affairs that are associated with the Indian reservation roads program to finance Indian technical centers under section 504(b).<sup>2</sup>

**23 U.S.C. § 204(b)(6) to read:**

(6) RESERVATION OF FUNDS.—The Secretary of the Interior ~~may~~ shall reserve ~~funds~~ \$2,100,000 from administrative funds of the Bureau of Indian Affairs that are associated with the Indian reservation roads program to finance Indian technical centers under section 504(b).

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<sup>2</sup> **Note:** The funding authorized in this section is ½ of the total funding provided for the Tribal Technical Assistance Program. The remaining funding flows through the Federal Highway Administration’s Office of Professional and Corporate Development. For that funding, see Section 5204, below.

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**Rationale:** The Tribal Technical Assistance Program centers provide much-needed technical assistance and training to tribal governments. This provision, in conjunction with section 5204, increases the accessibility of the TTAPs by requiring the Federal Highway Administration Office of Professional and Corporate Development to establish a TTAP center in each of the BIA’s twelve regions and increases the funding for the TTAPs (to \$350,000 each).

<p><b>Section 1119. Federal Lands Highways</b></p> <p>(i) MAINTENANCE OF INDIAN RESERVATION ROADS.—Section 204(c) of such title is amended by inserting after “allocated to an Indian tribe”: “or \$500,000, whichever is greater,”.</p>	<p><b>23 U.S.C. § 204(c) to read:</b></p> <p>(c) Before approving as a project on an Indian reservation road any project eligible for funds apportioned under section 104 or section 144 of this title in a State, the Secretary must determine that the obligation of funds for such project is supplementary to and not in lieu of the obligation, for projects on Indian reservation roads, of a fair and equitable share of funds apportioned to such State under section 104 of this title. Notwithstanding any other provision of this title, of the amount of funds allocated for Indian reservation roads from the Highway Trust Fund, not more than 25 percent of the funds allocated to an Indian tribe <u>or \$500,000, whichever is greater,</u> may be expended for the purpose of maintenance, excluding road sealing which shall not be subject to any limitation. The Bureau of Indian Affairs shall continue to retain primary responsibility, including annual funding request responsibility, for road maintenance programs on Indian reservations. The Secretary shall ensure that funding made available under this subsection for maintenance of Indian reservation roads for each fiscal year is supplementary to and not in lieu of any obligation of funds by the Bureau of Indian Affairs for road maintenance programs on Indian reservations.</p>
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**Rationale:** The BIA has consistently failed to meet its statutory obligation to maintain Indian reservation roads and bridges to an adequate standard. Although the BIA estimated in 2003 that it needed over \$120 million per year to maintain BIA roads, for FY 2009 the BIA proposed to cut funding for the BIA Road Maintenance Program from an inadequate \$26 million, to only \$13 million. In SAFETEA-LU, to assist tribes in addressing this problem, Congress authorized tribes to expend up to 25 percent of their annual IRR allocations on road maintenance. Tribes have put these funds to good use, but tribes with small annual allocations – allocations that are insufficient to construct a project but could be put to good use maintaining local access roads – are restricted under the 25 percent limit from making good use of their small tribal shares. This provision would authorize tribes whose annual IRR Program shares are less than \$2 million to expend a greater percentage of those funds on maintenance if, in the tribal leadership’s judgment, such an expenditure would best serve the needs of the tribal community.

<p><b>Section 1119. FEDERAL LANDS HIGHWAYS</b></p> <p>(xx) ALLOCATION OF INDIAN RESERVATION ROADS PROGRAM FUNDS.—Section 202(d)(2) of such title is amended by striking subparagraph (A) and inserting the following:</p> <p>“(A) Allocation of Funds.—</p> <p>“(i) All funds authorized to be appropriated for Indian reservation roads shall be allocated among Indian tribes for fiscal year 2000 and each subsequent fiscal year in accordance with a formula established by the Secretary of the Interior under a negotiated rulemaking procedure under subchapter III of chapter 5 of title 5, United States Code.</p> <p>“(ii) Notwithstanding subsection (i), the Secretary shall allocate funds such that each tribe’s total IRR Program allocation</p>	<p><b>23 U.S.C. § 202(d)(2)(A) to read:</b></p> <p>(A) <u>In general</u> Allocation of Funds.—</p> <p>(i) All funds authorized to be appropriated for Indian reservation roads shall be allocated among Indian tribes for fiscal year 2000 and each subsequent fiscal year in accordance with a formula established by the Secretary of the Interior under a negotiated rulemaking procedure under subchapter III of chapter 5 of title 5, United States Code.</p> <p>(ii) <u>Notwithstanding subsection (i), the Secretary shall allocate funds such that each tribe’s total IRR Program allocation is equal to no less than \$50,000 to be adjusted annually for inflation beginning on October 1, 2010, using the Producer Price Index.</u></p>
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<p>is equal to no less than \$50,000 to be adjusted annually for inflation beginning on October 1, 2010, using the Producer Price Index.</p> <p>“(iii) In this section a tribe’s “total IRR Program allocation” means the total of the tribe’s Relative Need Distribution Formula share, the tribe’s Population Adjustment Factor and the tribe’s share of 2% planning funds but shall not include the tribe’s High Priority Project funds, Public Lands Discretionary Funds, or any additional transportation funds that the tribe may receive.”</p> <p>“(iv) The subsection shall not be construed to require the Secretary to withhold funds from Indian tribes participating in the IRR Program to make funds available to Indian tribes that have voluntarily agreed to forego minimum IRR Program funding.”</p>	<p><u>(iii) In this section a tribe’s “total IRR Program allocation” means the total of the tribe’s Relative Need Distribution Formula share, the tribe’s Population Adjustment Factor and the tribe’s share of 2% planning funds but shall not include the tribe’s High Priority Project funds, Public Lands Discretionary Funds, or any additional transportation funds that the tribe may receive.</u></p> <p><u>(iv) The subsection shall not be construed to require the Secretary to withhold funds from Indian tribes participating in the IRR Program to make funds available to Indian tribes that have voluntarily agreed to forego minimum IRR Program funding.</u></p>
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**Rationale:** A minimum level of funding is necessary for tribal governments to develop successful transportation programs. This section sets the minimum level of such funding at \$50,000 per tribe adjusted annually for inflation. The minimum \$50,000 share includes the tribe’s Relative Need Distribution Formula share, Population Adjustment share and the 2% planning share but does not include the tribe’s IRR High Priority Project funds, Public Lands Discretionary funds or tribal transportation funds from other sources. This level of funding is sufficient to hire a tribal transportation planner or director so that the tribe may begin the planning process, seek additional sources of funding and develop a program that can provide transportation services to the tribal community.

<p><b>Section 1119. FEDERAL LANDS HIGHWAYS</b></p> <p>(xx) FLEXIBLE FINANCING.—Section 202(d)(3) of such title is amended by adding at the end the following:</p> <p>“(C) FLEXIBLE FINANCING.—</p>	<p><b>23 U.S.C. § 202(d)(3) to read:</b></p> <p><b>(3) Contracts and agreements with Indian tribes.--</b></p> <p><b>(A) In general.--</b>Notwithstanding any other provision of law or any interagency agreement, program guideline, manual, or policy</p>
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“(i) A tribal government that has entered into a Self-Determination Contract or a Self-Governance Compact with the Secretary or the Secretary of the Interior pursuant to the authority under the Indian Self-Determination and Education Assistance Act (ISDEAA), Pub. L. 93-638 (1975) (25 U.S.C. § 450 et seq.), as amended, or has entered into an agreement with the Secretary of Transportation under subsection (d)(5) of this section may advance construct any project eligible for assistance under this title or chapter 53 of title 49, United States Code;

“(ii) A tribal government that has entered into a Self-Determination Contract or a Self-Governance Compact with the Secretary or the Secretary of the Interior pursuant to the authority under the Indian Self-Determination and Education Assistance Act (ISDEAA), Pub. L. 93-638 (1975) (25 U.S.C. § 450 et seq.), as amended, or has entered into an agreement with the Secretary of Transportation under subsection (d)(5) of this section may use any debt financing instrument authorized under section 122 of this title or other applicable laws for any project eligible for assistance under this title or chapter 53 of title 49, United States Code and may use funds made available to the tribal government under this title or chapter 53 of title 49, United States Code for—

“(I) interest payments under an eligible debt financing instrument;

“(II) the retirement of principal of an eligible debt financing instrument;

“(III) the cost of the issuance of an eligible debt financing

directive, all funds made available under this chapter and section 125(e) for Indian reservation roads and for highway bridges located on Indian reservation roads to pay for the costs of programs, services, functions, and activities, or portions thereof, that are specifically or functionally related to the cost of planning, research, engineering, and construction of any highway, road, bridge, parkway, or transit 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 and agreements for such planning, research, engineering, and construction in accordance with the Indian Self-Determination and Education Assistance Act.

**(B) Exclusion of agency participation.**--Funds for programs, functions, services, or activities, or portions thereof, including supportive administrative functions that are otherwise contractible to which subparagraph (A) applies, shall be paid in accordance with subparagraph (A) without regard to the organizational level at which the Department of the Interior that has previously carried out such programs, functions, services, or activities.

**(C) Flexible Financing.**—

(i) A tribal government that has entered into a Self-Determination Contract or a Self-Governance Compact with the Secretary or the Secretary of the Interior pursuant to the authority under the Indian Self-Determination and Education Assistance Act (ISDEAA), Pub. L. 93-638 (1975) (25 U.S.C. § 450 et seq.), as amended, or has entered into an agreement with the Secretary of Transportation under subsection (d)(5) of this section may

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<p>instrument;</p> <p>“(IV) the cost of insurance for an eligible debt financing instrument; and</p> <p>“(V) any other cost incidental to the sale of an eligible debt financing instrument (as determined by the Secretary).</p> <p>“(iii) Upon request of a tribal government that has entered into a Self-Determination Contract or a Self-Governance Compact with the Secretary or the Secretary of the Interior pursuant to the authority under the Indian Self-Determination and Education Assistance Act (ISDEAA), Pub. L. 93-638 (1975) (25 U.S.C. § 450 et seq.), as amended, or has entered into an agreement with the Secretary of Transportation under subsection (d)(5) of this section, the Secretary or the Secretary of the Interior shall include provisions in the tribal government’s contract, compact or agreement that facilitate and permit the tribal government’s advance construction or use of flexible financing methods authorized by subparagraph (ii) and other applicable laws for projects eligible for assistance under this title or chapter 53 of title 49, United States Code. Such provisions may include, but are not limited to, provisions that authorize the electronic transfer of funds made available to the tribal government under this title or chapter 53 of title 49, United States Code directly from the Secretary or the Secretary of the Interior to a trustee or other depository designated by the tribal government, and provisions that authorize the Secretary or the Secretary of the Interior to maintain any project so funded on the transportation improvement program approved by the Secretary.”</p>	<p><u>advance construct any project eligible for assistance under this title or chapter 53 of title 49, United States Code;</u></p> <p><u>(ii) A tribal government that has entered into a Self-Determination Contract or a Self-Governance Compact with the Secretary or the Secretary of the Interior pursuant to the authority under the Indian Self-Determination and Education Assistance Act (ISDEAA), Pub. L. 93-638 (1975) (25 U.S.C. § 450 et seq.), as amended, or has entered into an agreement with the Secretary of Transportation under subsection (d)(5) of this section may use any debt financing instrument authorized under section 122 of this title or other applicable laws for any project eligible for assistance under this title or chapter 53 of title 49, United States Code and may use funds made available to the tribal government under this title or chapter 53 of title 49, United States Code for—</u></p> <p><u>(I) interest payments under an eligible debt financing instrument;</u></p> <p><u>(II) the retirement of principal of an eligible debt financing instrument;</u></p> <p><u>(III) the cost of the issuance of an eligible debt financing instrument;</u></p> <p><u>(IV) the cost of insurance for an eligible debt financing instrument; and</u></p> <p><u>(V) any other cost incidental to the sale of an eligible debt financing instrument (as determined by the Secretary).</u></p>
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	<p><u>(iii) Upon request of a tribal government that has entered into a Self-Determination Contract or a Self-Governance Compact with the Secretary or the Secretary of the Interior pursuant to the authority under the Indian Self-Determination and Education Assistance Act (ISDEAA), Pub. L. 93-638 (1975) (25 U.S.C. § 450 et seq.), as amended, or has entered into an agreement with the Secretary of Transportation under subsection (d)(5) of this section, the Secretary or the Secretary of the Interior shall include provisions in the tribal government’s contract, compact or agreement that facilitate and permit the tribal government’s advance construction or use of flexible financing methods authorized by subparagraph (ii) and other applicable laws for projects eligible for assistance under this title or chapter 53 of title 49, United States Code. Such provisions may include, but are not limited to, provisions that authorize the electronic transfer of funds made available to the tribal government under this title or chapter 53 of title 49, United States Code directly from the Secretary or the Secretary of the Interior to a trustee or other depository designated by the tribal government, and provisions that authorize the Secretary or the Secretary of the Interior to maintain any project so funded on the transportation improvement program approved by the Secretary.</u></p>
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**Rationale:** In an era of rapidly rising construction costs and relatively low capital financing interest rates, the use of flexible financing techniques to advance the construction of Tribal transportation projects may make great economic sense for some Tribes. Although the U.S. Department of Transportation has included favorable flexible financing terms in its IRR Program Agreements, the Department of the Interior’s requires Tribes to negotiate separate, project-specific flexible financing agreements. This unnecessary requirement is costly and inefficient. This provision requires the Secretary of the Interior to include such provisions – for example provisions that authorize the electronic transfer of IRR Program funds directly from the BIA to creditor institutions if the Tribe approves such transfers – in ISDEAA contracts and compacts, at the request of the Tribal government.

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**Section 1119. FEDERAL LANDS HIGHWAYS**

(XX) [NEW PROGRAM] FEDERAL LANDS HIGHWAYS TRIBAL TRANSPORTATION SAFETY PROGRAM.— Section 202(d) of such title is amended by adding at the end the following:

“(6) Tribal Transportation Safety Program.—

“(A) Establishment.—The Secretary shall establish and implement a Tribal Transportation Safety Program in accordance with this section.

“(B) PURPOSE.—The purpose of the Tribal Transportation Safety Program shall be to achieve a significant reduction in traffic fatalities and serious injuries on Indian reservation roads and bridges.

“(C) GRANTS.—

“(1) The Secretary shall make grants to tribal governments from funds authorized to be appropriated for this subsection to carry out eligible projects and activities.

“(2) The Secretary shall develop requirements for the award of grants under this subsection pursuant to regulations issued in accordance with the negotiated rulemaking procedure established in section 202(d)(8) of this title of this Act but the lack of promulgated regulations shall not limit the

**23 U.S.C. § 202(d)(6) to read:**

(6) Tribal Transportation Safety program.—

(A) Establishment.—The Secretary shall establish and implement a Tribal Transportation Safety Program in accordance with this section.

(B) Purpose.—The purpose of the Tribal Transportation Safety Program shall be to achieve a significant reduction in traffic fatalities and serious injuries on Indian reservation roads and bridges.

(C) GRANTS.—

(1) The Secretary shall make grants to tribal governments from funds authorized to be appropriated for this subsection to carry out eligible projects and activities.

(2) The Secretary shall develop requirements for the award of grants under this subsection pursuant to regulations issued in accordance with the negotiated rulemaking procedure established in section 202(d)(8) of this title of this Act but the lack of promulgated regulations shall not limit the effect of this section.

(3) The Secretary shall award grants under this subsection in accordance with and pursuant to authority under

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effect of this section.

“(3) The Secretary shall award grants under this subsection in accordance with and pursuant to authority under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*), as amended, including the Tribal Transportation Self-Governance Program, or paragraph (5) of this subsection.

“(D) ELIGIBLE PROJECTS AND ACTIVITIES.—Eligible projects and activities are projects and activities that--

“(I) corrects or improves a hazardous road location or feature; or

“(II) addresses a safety problem on a tribal transportation facility that is included in the National tribal transportation facility inventory .

“(E) Inclusions.--The term “tribal transportation safety improvement project” includes a project for one or more of the following:

“(i) An intersection safety improvement.

“(ii) Pavement and shoulder widening (including addition of a passing lane to remedy an unsafe condition).

“(iii) Installation of rumble strips or another warning device, if the rumble strips or other warning devices do not adversely affect the safety or mobility of bicyclists, pedestrians, and the disabled.

the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*), as amended, including the Tribal Transportation Self-Governance Program, or paragraph (5) of this subsection.

(D) Definition.— The term “tribal transportation safety improvement project” means a project that--

(i) corrects or improves a hazardous road location or feature; or

(ii) addresses a safety problem on a tribal transportation facility that is included in the National tribal transportation facility inventory .

(E) Inclusions.--The term “tribal transportation safety improvement project” includes but is not limited to a project for one or more of the following:

(i) An intersection safety improvement.

(ii) Pavement and shoulder widening (including addition of a passing lane to remedy an unsafe condition).

(iii) Installation of rumble strips or another warning device, if the rumble strips or other warning devices do not adversely affect the safety or mobility of bicyclists, pedestrians, and the disabled.

(iv) Installation of a skid-resistant surface at an intersection or other location with a high frequency of accidents.

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<p>“(iv) Installation of a skid-resistant surface at an intersection or other location with a high frequency of accidents.</p> <p>“(v) An improvement for pedestrian or bicyclist safety or safety of the disabled.</p> <p>“(vi) Construction of any project for the elimination of hazards at a railway-highway crossing that is eligible for funding under section 130, including the separation or protection of grades at railway-highway crossings.</p> <p>“(vii) Construction of a railway-highway crossing safety feature, including installation of protective devices.</p> <p>“(viii) The conduct of a model traffic enforcement activity at a railway-highway crossing.</p> <p>“(ix) Construction of a traffic calming feature.</p> <p>“(x) Elimination of a roadside obstacle.</p> <p>“(xi) Improvement of highway signage and pavement markings.</p> <p>“(xii) Installation of a priority control system for emergency vehicles at signalized intersections.</p> <p>“(xiii) Installation of a traffic control or other warning device at a location with high accident potential.</p>	<p><u>(v) An improvement for pedestrian or bicyclist safety or safety of the disabled.</u></p> <p><u>(vi) Construction of any project for the elimination of hazards at a railway-highway crossing that is eligible for funding under section 130, including the separation or protection of grades at railway-highway crossings.</u></p> <p><u>(vii) Construction of a railway-highway crossing safety feature, including installation of protective devices.</u></p> <p><u>(viii) The conduct of a model traffic enforcement activity at a railway-highway crossing.</u></p> <p><u>(ix) Construction of a traffic calming feature.</u></p> <p><u>(x) Elimination of a roadside obstacle.</u></p> <p><u>(xi) Improvement of highway signage and pavement markings.</u></p> <p><u>(xii) Installation of a priority control system for emergency vehicles at signalized intersections.</u></p> <p><u>(xiii) Installation of a traffic control or other warning device at a location with high accident potential.</u></p> <p><u>(xiv) Safety-conscious planning.</u></p> <p><u>(xv) Improvement in the collection and analysis of crash</u></p>
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<p>“(xiv) Safety-conscious planning.</p> <p>“(xv) Improvement in the collection and analysis of crash data.</p> <p>“(xvi) Planning integrated interoperable emergency communications equipment, operational activities, or traffic enforcement activities (including police assistance) relating to workzone safety.</p> <p>“(xvii) Installation of guardrails, barriers (including barriers between construction work zones and traffic lanes for the safety of motorists and workers), and crash attenuators.</p> <p>“(xviii) The addition or retrofitting of structures or other measures to eliminate or reduce accidents involving vehicles and wildlife.</p> <p>“(xix) Installation and maintenance of signs (including fluorescent, yellow-green signs) at pedestrian-bicycle crossings and in school zones.</p> <p>“(xx) Construction and yellow-green signs at pedestrian-bicycle crossings and in school zones.</p> <p>“(xxi) Construction and operational improvements on high risk rural roads that appear on the National tribal transportation facility inventory .</p> <p>“(xxii) Development and operation of safety management systems.</p>	<p><u>data.</u></p> <p><u>(xvi) Planning integrated interoperable emergency communications equipment, operational activities, or traffic enforcement activities (including police assistance) relating to workzone safety.</u></p> <p><u>(xvii) Installation of guardrails, barriers (including barriers between construction work zones and traffic lanes for the safety of motorists and workers), and crash attenuators.</u></p> <p><u>(xviii) The addition or retrofitting of structures or other measures to eliminate or reduce accidents involving vehicles and wildlife.</u></p> <p><u>(xix) Installation and maintenance of signs (including fluorescent, yellow-green signs) at pedestrian-bicycle crossings and in school zones.</u></p> <p><u>(xx) Construction and yellow-green signs at pedestrian-bicycle crossings and in school zones.</u></p> <p><u>(xxi) Construction and operational improvements on high risk rural roads that appear on the National tribal transportation facility inventory .</u></p> <p><u>(xxii) Development and operation of safety management systems.</u></p> <p><u>(xxiii) Highway safety education programs.</u></p>
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<p>“(xxiii) Highway safety education programs.</p> <p>“(xxiv) Safety projects and activities authorized under chapter four of title 23, United States Code.</p> <p>“(F) The Federal share of the cost of a project under this subsection shall be 100 percent.”</p>	<p><u>(xxiv) Safety projects and activities authorized under chapter four of title 23, United States Code.</u></p> <p><u>(F) The Federal share of the cost of a project under this subsection shall be 100 percent.”</u></p>
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**Rationale:** Native Americans suffer injury and death driving and walking along reservation roadways at rates far above the national average. American Indians also have the highest rates of pedestrian injury and death per capita of any racial or ethnic group in the United States. This section creates a Federal Lands Highway Tribal Transportation Safety Program funded at \$50 million annually to address roadway structural and design flaws that contribute to these frighteningly high rates of injury and death.

<p><b>Section 1119. FEDERAL LANDS HIGHWAYS</b></p> <p>(xx) RIGHTS-OF-WAY AND CORRIDOR MANAGEMENT.—</p> <p>(1) Section 202(d) of such title is amended by adding at the end the following:</p> <p>“(7) RIGHTS-OF-WAY AND CORRIDOR MANAGEMENT POLICIES.—</p> <p>“(A) APPLICABLE REGULATIONS.—</p> <p>“(i) Notwithstanding any other law or regulation, a tribal government shall not be subject to the requirements of part 169 of title 25, Code of Federal Regulations, with respect to</p>	<p><b>23 U.S.C. § 202(d)(7) to read:</b></p> <p><u>(7) RIGHTS-OF-WAY AND CORRIDOR MANAGEMENT POLICIES.—</u></p> <p><u>(A) APPLICABLE REGULATIONS.—</u></p> <p><u>(i) Notwithstanding any other law or regulation, a tribal government shall not be subject to the requirements of part 169 of title 25, Code of Federal Regulations, with respect to the procurement of rights of way by a tribal government or granting of rights-of-way to a tribal government for projects eligible for assistance under this title or chapter 53 of title 49, United States Code; provided the tribal government has entered into a contract, compact or agreement pursuant to the</u></p>
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the procurement of rights of way by a tribal government or granting of rights-of-way to a tribal government for projects eligible for assistance under this title or chapter 53 of title 49, United States Code; provided the tribal government has entered into a contract, compact or agreement pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*), as amended, or paragraph (5) of this subsection and the tribal government has assumed responsibility under the contract, compact or agreement for some functions relating to the procurement and granting of rights-of-way.

“(ii) In accordance with the negotiated rulemaking procedure established in section 202(d)(8) of this title, the Secretary of the Interior shall negotiate and promulgate regulations setting forth the criteria according to which tribal governments may—

“(I) carry out the maximum permissible functions associated with the procurement or granting of rights-of-way for projects eligible for assistance under this title or chapter 53 of title 49, United States Code that the tribal government is performing pursuant to a contract, compact or agreement under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*), as amended, or paragraph (5); or

“(II) develop corridor management policies.

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

“(i) Upon request of any tribal government and within 120

Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*), as amended, or paragraph (5) of this subsection and the tribal government has assumed responsibility under the contract, compact or agreement for some functions relating to the procurement and granting of rights-of-way.

“(ii) In accordance with the negotiated rulemaking procedure established in section 202(d)(8) of this title, the Secretary of the Interior shall negotiate and promulgate regulations setting forth the criteria according to which tribal governments may—

“(I) carry out the maximum permissible functions associated with the procurement or granting of rights-of-way for projects eligible for assistance under this title or chapter 53 of title 49, United States Code that the tribal government is performing pursuant to a contract, compact or agreement under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*), as amended, or paragraph (5); or

“(II) develop corridor management policies.

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

“(i) Upon request of any tribal government and within 120 days of the request, the Secretary of the Interior shall provide the tribal government with documentation of enforceable rights-of-way for all routes that are eligible for inclusion in the National tribal transportation facility inventory authorized under subsection (d)(2)(G) as of the date of enactment of this

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days of the request, the Secretary of the Interior shall provide the tribal government with documentation of enforceable rights-of-way for all routes that are eligible for inclusion in the National tribal transportation facility inventory authorized under subsection (d)(2)(G) as of the date of enactment of this Act that are owned by the Bureau of Indian Affairs or the tribal government;

“(ii) If the Secretary of the Interior is unable to locate documentation of enforceable right-of-way under subparagraph (i), the Secretary of the Interior shall acquire, by purchase or otherwise, right-of-way sufficient to support the use of the route as of the date of enactment of this Act.

“(iii) In acquiring rights-of-way under subparagraph (ii), the Secretary of the Interior shall not require a tribal government to use tribal funds or funds made available to the tribal government under this title or chapter 53 of title 49, United States Code.

“(C) RIGHT-OF-WAY RECORDS.—

“(i) Not later than 3 years after the date of enactment of this Act, the Secretary of the Interior shall complete a comprehensive national update of right-of-way records for all routes that are eligible for inclusion in the National tribal transportation facility inventory that are owned by the Bureau of Indian Affairs or tribal governments.

“(ii) In completing the update of records required under subparagraph (i), the Secretary shall computerize and organize

act that are owned by the Bureau of Indian Affairs or the tribal government;

(ii) If the Secretary of the Interior is unable to locate documentation of enforceable right-of-way under subparagraph (i), the Secretary of the Interior shall acquire, by purchase or otherwise, right-of-way sufficient to support the use of the route as of the date of enactment of this act.

(iii) In acquiring rights-of-way under subparagraph (ii), the Secretary of the Interior shall not require a tribal government to use tribal funds or funds made available to the tribal government under this title or chapter 53 of title 49, United States Code.

(C) RIGHT-OF-WAY RECORDS.—

(i) Not later than 3 years after the date of enactment of this act, the Secretary of the Interior shall complete a comprehensive national update of right-of-way records for all routes that are eligible for inclusion in the National tribal transportation facility inventory that are owned by the Bureau of Indian Affairs or tribal governments.

(ii) In completing the update of records required under subparagraph (i), the Secretary shall computerize and organize all right-of-way records and shall establish a system for ensuring that documentation of right-of-way for new BIA or tribally-owned routes is promptly added to the right-of-way records database.

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<p>all right-of-way records and shall establish a system for ensuring that documentation of right-of-way for new BIA or tribally-owned routes is promptly added to the right-of-way records database.</p> <p>“(iii) The Secretary shall make all such updated records available to the tribal government on whose inventory the routes appear in any commonly used mapping format requested by the tribal government.</p> <p>“(D) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) \$10,000,000 for each of fiscal years 2010 through 2015 to carry out this paragraph.”</p>	<p><u>(iii)The Secretary shall make all such updated records available to the tribal government on whose inventory the routes appear in any commonly used mapping format requested by the tribal government or consortium.</u></p> <p><u>(D) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) \$10,000,000 for each of fiscal years 2010 through 2015 to carry out this paragraph.</u></p>
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**Rationale:** The BIA has, in many cases, failed to maintain adequate records of rights-of-way the BIA acquired, disposed of, or otherwise transferred long ago for IRR routes. As a result, when Tribes seek to improve existing routes, they are often forced to undertake time-consuming and costly efforts to acquire or establish rights-of-way for those routes. In addition, when tribes seek to procure right-of-way for transportation purposes, they have been required to comply with 25 C.F.R. Part 169, which was written to govern the procurement of right-of-way across Indian country by private, non-Indian parties. To address these problems, these provisions:

- Clarify that Part 169 does not govern the procurement of right-of-way for transportation purposes by a tribal government where the tribal government has assumed responsibility under a contract, compact or agreement authorized by the Indian Self-Determination and Education Assistance Act or under an IRR Program Agreement with the FHWA;
- Clarify that Indian tribal governments are authorized to assume responsibility for the maximum permissible functions associated with the procurement and granting of right-of-way for transportation and transit projects and are authorized to develop corridor management policies;

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- Require that appropriate regulations be developed to govern the procurement and granting of right-of-way for tribal transportation projects and the development of corridor management policies during the tribal transportation negotiated rulemaking;
- Require the Bureau, at a tribe’s request, to provide the tribe with documentation of enforceable right-of-way for any BIA or tribally-owned route that is eligible for inclusion on that tribe’s portion of the IRR Program inventory as of the date of the passage of the highway legislation and, where the Bureau is unable to locate such documentation, to acquire right-of-way sufficient to support the use of the route;
- Require the Bureau to develop a comprehensive national update of right-of-way records in a computerized database and make available to tribal governments records for the routes on that tribe’s inventory.
- Authorize the appropriation of \$10,000,000 for each of fiscal years 2010 through 2014 to carry out these provisions.

<p><b>Section 1119. FEDERAL LANDS HIGHWAYS</b></p> <p>(xx) NEGOTIATED RULEMAKING.—Section 202(d) is amended by adding at the end the following:</p> <p>“(8) REGULATIONS.—</p> <p>“(A) Notwithstanding sections 563(a) and 565(a) of title 5, United States Code the Secretary and the Secretary of the Interior shall issue joint regulations to implement sections 125(e) (Tribal Transportation Emergency Relief), 148(f)(3) (High Risk Tribal Roads), 202(d)(7) (Rights-of-Way and Corridor Management, 202(d)(6) (Federal Highway Administration Tribal Transportation</p>	<p><b>23 U.S.C. § 202(d)(8) to read:</b></p> <p><u>(8) REGULATIONS.—</u></p> <p><u>(A) Notwithstanding sections 563(a) and 565(a) of title 5, United States Code, the Secretary and the Secretary of the Interior shall issue joint regulations to implement sections 125(e) (Tribal Transportation Emergency Relief), 148(f)(3) (High Risk Tribal Roads), 202(d)(7) (Rights-of-Way and Corridor Management, 202(d)(6) (Federal Highway Administration Tribal Transportation Safety Program) and 413 (National Highway Traffic Safety Administration Tribal Safety Program) of this title in accordance with a negotiated rulemaking procedure under subchapter III of</u></p>
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Safety Program) and 413 (National Highway Traffic Safety Administration Tribal Safety Program) of this title in accordance with a negotiated rulemaking procedure under subchapter III of chapter 5 of title 5, United States Code. The regulations shall be issued in final form not later than January 1, 2011 and shall take effect on February 1, 2011.

“(B) Negotiated Rulemaking Committee.—In establishing the negotiated rulemaking committee to carry out subparagraph (A), the Secretary and the Secretary of the Interior shall—

“(i) apply the procedures under subchapter III of chapter 5 of title 5, United States Code in a manner that reflects the unique government-to-government relationship between tribal governments and the United States; and

(ii) ensure that membership of the committee includes only representatives of the Federal government and of geographically diverse small, medium and large Indian tribes ensuring representation from each of the each of the twelve regions served by the Bureau of Indian Affairs.”

chapter 5 of title 5, United States Code. The regulations shall be issued in final form not later than January 1, 2011 and shall take effect on February 1, 2011.

(B) Negotiated Rulemaking Committee.—In establishing the negotiated rulemaking committee to carry out subparagraph (A), the Secretary and the Secretary of the Interior shall—

(i) apply the procedures under subchapter III of chapter 5 of title 5, United States Code in a manner that reflects the unique government-to-government relationship between tribal governments and the United States; and

(ii) ensure that membership of the committee includes only representatives of the Federal government and of geographically diverse small, medium and large Indian tribes ensuring representation from each of the each of the twelve regions served by the Bureau of Indian Affairs .

**Rationale:** This provision requires the Secretary of Transportation and the Secretary of the Interior to establish a negotiated rulemaking committee to establish regulations to implement the many new programs and changes proposed in this legislation. The committee would be required to include only federal and tribal representatives and would include representation from geographically diverse small, medium and large Indian tribes ensuring representation from each of the each of the twelve regions served by the Bureau of Indian Affairs.

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<p><b>Section 1119. FEDERAL LANDS HIGHWAYS<sup>3</sup></b></p> <p>(xx) CONFORMING AMENDMENTS.—</p> <p>(1) Section 450b(i) of title 25, United States Code is amended to read as follows:</p> <p>“(i) “Secretary”, unless otherwise designated, means any one or more of the following: the Secretary of Health and Human Services, the Secretary of the Interior, or the Secretary of Transportation;”</p> <p>(2) Section 450aa of title 25, United States Code is amended by striking “.” at the end of the clause (9), and inserting “or the Secretary of Transportation.”</p> <p>(3) Part D of Subchapter II of Chapter 14 of title 25, of such title is amended by adding at the end the following:</p> <p>“458__ APPLICABILITY OF THE ACT TO THE DEPARTMENT OF TRANSPORTATION.</p> <p>“(a) Notwithstanding any other provision of law, the Secretary of Transportation shall carry out a program within the Department of Transportation to be known as the Tribal Transportation Self-Governance Program.</p>	<p><b>25 U.S.C. § 450b(i) to read:</b></p> <p>(i) “Secretary”, unless otherwise designated, means <u>any one or more of the following: the Secretary of Health and Human Services, the Secretary of the Interior, or the Secretary of Transportation;</u></p> <p><b>25 U.S.C. § 450aa to read:</b></p> <p>(9) SECRETARY – The term ‘Secretary’ means the Secretary of the Interior <u>or the Secretary of Transportation.</u></p> <p><b>25 U.S.C. § 458__ to read:</b></p> <p>(a) <u>Notwithstanding any other provision of law, the Secretary of Transportation shall carry out a program within the Department of Transportation to be known as the Tribal Transportation Self-Governance Program.</u></p>
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<sup>3</sup> **Note:** Please note that these ISDEAA sections are intended to amend Title IV of the ISDEAA as Title IV is expected to be amended in separate, pending legislation.

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“(b) Notwithstanding any other provision of law, the Secretary of Transportation shall enter into funding agreements under this title with any Indian tribe who elects to utilize the authority of this title to govern any funds made available to Indian tribes to carry out transportation programs (including transit programs) authorized under Title 23 and Chapter 53 of Title 49, United States Code.

“(c) Notwithstanding any other provision of law, the negotiation and implementation of each funding agreement entered into under this section shall be governed by the provisions of this title.

“(d) Regulations.

“(1) Not later than 90 days after [DATE OF ENACTMENT], 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 part.

“(2) A negotiated rulemaking committee established pursuant to section 565 of title 5 to carry out this section shall have as its members only Federal and tribal government representatives, a majority of whom shall be representatives of Indian tribes with self-governance agreements under this chapter.

“(3) 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 the Indian tribes.

(b) Notwithstanding any other provision of law, the Secretary of Transportation shall enter into funding agreements under this title with any Indian tribe who elects to utilize the authority of this title to govern any funds made available to Indian tribes to carry out tribal transportation programs (including transit programs) authorized under Title 23 and Chapter 53 of Title 49, United States Code.

(c) Notwithstanding any other provision of law, the negotiation and implementation of each funding agreement entered into under this section shall be governed by the provisions of this title.

(d) Regulations.

(1) Not later than 90 days after [DATE OF ENACTMENT], the Secretary of Transportation 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 part.

(2) A negotiated rulemaking committee established pursuant to section 565 of title 5 to carry out this section shall have as its members only Federal and tribal government representatives, a majority of whom shall be representatives of Indian tribes with self-governance agreements under this chapter.

(3) The Secretary shall adapt the negotiated rulemaking procedures to the unique context of Self-Governance

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<p>“(4) The lack of promulgated regulations shall not limit the effect of this part.</p> <p>“(e) Notwithstanding any other provision of law, the Secretary of Transportation is authorized and directed, upon the election of a tribal government, to maintain current Federal Highway Administration Indian Reservation Roads Program and Funding Agreements, or to enter into new agreements under the existing authority of section 202(d)(5) of title 23, United States Code. The Secretary’s authority under section 202(d)(5) of title 23, United States Code is neither impaired nor diminished by the establishment of the Tribal Transportation Self-Governance Program within the Department of Transportation.”</p>	<p style="text-align: center;"><u>and the government-to-government relationship between the United States and the Indian tribes.</u></p> <p style="text-align: center;"><u>(4) The lack of promulgated regulations shall not limit the effect of this part.</u></p> <p><u>(e) Notwithstanding any other provision of law, the Secretary of Transportation is authorized and directed, upon the election of a tribal government, to maintain current Federal Highway Administration Indian Reservation Roads Program and Funding Agreements, or to enter into new agreements under the existing authority of section 202(d)(5) of title 23, United States Code. The Secretary’s authority under section 202(d)(5) of title 23, United States Code is neither impaired nor diminished by the establishment of the Tribal Transportation Self-Governance Program within the Department of Transportation.</u></p>
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**Rationale:** To assure the maximum program benefits of federal transportation funding by reducing transaction costs, this section extends title IV of the Indian Self-Determination and Education Assistance Act (ISDEAA), Pub. L. 93-638 (1975), as title IV is expected to be amended pursuant to pending legislation, to all Federal transportation programs serving tribes and all funding agencies within the U.S. Department of Transportation. The Self-Governance Program of the ISDEAA has significantly improved the effectiveness of programs the U.S. Department of Health and Human Services and the Department of the Interior administer for the benefit of Indians. This section will extend those same benefits of the ISDEAA to the transportation programs serving tribes and administered by modal administrations within the Department of Transportation.

This section adopts the same language used in other sections of the ISDEAA to require the Secretary of Transportation to create a Tribal Self-Governance Program and requires the Secretary of Transportation to enter into a title IV agreement – at the request of a Tribe – for any program authorized under either title 23 or Chapter 53 of Title 49 of the United States Code. This would mean that Tribes would be able to obtain all of their transportation funds (including not only IRR Program funds, but also transit, Federal-aid and other DOT funds) under a title IV ISDEAA agreement. By authorizing Tribes to elect to use these ISDEAA funding agreements

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for all transportation funds (and requiring DOT to respect that election), and thereby requiring Tribes to meet only a single set of grant and administrative requirements, these amendments should significantly streamline Tribal efforts to obtain and administer such funds. This section also preserves the option currently available to Tribes to enter into FHWA IRR Program Agreements and referenced Funding Agreements with the Secretary of Transportation, and tribes electing to do so will continue to be able to use those existing agreements.

**Section 1120. FEDERAL LANDS HIGHWAYS**

(c) FEDERAL LANDS HIGHWAYS PROGRAM.—Section 202(b)(1) is amended

(1) in subsection (A) by striking the “.” and inserting “, or on application to the Secretary by any Federally recognized Indian tribe.”

(2) in subsection (B) by inserting after “State”: “or a Federally recognized Indian tribe with lands in a State”.

**23 U.S.C. § 202(b)(1) to read:**

**(A) In general.**--On October 1 of each fiscal year, the Secretary shall allocate 34 percent of the sums authorized to be appropriated for that fiscal year for public lands highways among those States having unappropriated or unreserved public lands, nontaxable Indian Lands, or other Federal reservations, on the basis of need in the States, respectively, as determined by the Secretary, on application of the State transportation departments of the respective States, or on application by any Federally recognized Indian tribe.

**(B) Preference.**--In making the allocation under subparagraph (A), the Secretary shall give preference to those projects that are significantly impacted by Federal land and resource management activities that are proposed by a State or a Federally recognized Indian tribe with lands in a State that contains at least 3 percent of the total public land in the United States.

**Rationale:** The United States Department of Transportation currently requires applicants, including tribes, for Public Lands Highways Discretionary grants, to submit applications through State transportation departments. This requirement imposes an unnecessary administrative burden on tribal governments, particularly when Congress has already identified funding for a tribal project. The current practice also subordinates tribal transportation priorities to those of State transportation departments. This

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provision would streamline the application process by authorizing tribal governments to submit applications for PLH-D grants directly to the U.S. Department of Transportation.

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<p><b>Section 1122. DEFINITIONS</b></p> <p>(a) INDIAN TRIBE.—Section 101(a) of such title is amended—</p> <p style="padding-left: 40px;">(1) by redesignating paragraphs (13) through (39) as paragraphs (14) through (40) respectively; and</p> <p style="padding-left: 40px;">(2) by inserting after paragraph (12) (as redesignated by paragraph (1)) the following:</p> <p>“(13) Indian tribe, Indian tribal government and tribal government.—</p> <p style="padding-left: 40px;">“(A) Generally.--The terms “Indian tribe,” “Indian tribal government,” and “tribal government” shall have the meaning given the term “Indian tribe” in § 4 of the Indian Self Determination and Education Assistance Act, as amended (25 U.S.C. 450b) except that they shall include tribal organizations, as defined in § 4 of the Indian Self Determination and Education Assistance Act, as amended (25 U.S.C. 450b) and tribal consortia as defined in this section.</p> <p style="padding-left: 40px;">“(B) Exception.—In subparagraph 202(d)(2)(A) of this title, “Indian tribes” means federally recognized Indian tribes included on the list the list of recognized tribes published by the Secretary of the Interior pursuant to section 479a-1 of title 25, united states code.”</p> <p style="padding-left: 40px;">(3) by redesignating paragraphs (37) through (40) (as redesignated by paragraph (1)) as paragraphs (38) through</p>	<p><b>23 U.S.C. § 101(a)(36) through (39) to read:</b></p> <p><u>(13) Indian tribe, Indian tribal government and tribal government.—</u></p> <p style="padding-left: 40px;"><u>(A) Generally.--The terms “Indian tribe,” “Indian tribal government,” and “tribal government” shall have the meaning given the term “Indian tribe” in § 4 of the Indian Self Determination and Education Assistance Act, as amended (25 U.S.C. 450b) except that they shall include tribal organizations, as defined in § 4 of the Indian Self Determination and Education Assistance Act, as amended (25 U.S.C. 450b) and tribal consortia as defined in this section.</u></p> <p style="padding-left: 40px;"><u>(B) Exception.—In subparagraph 202(d)(2)(A) of this title, “Indian tribes” means federally recognized Indian tribes included on the list the list of recognized tribes published by the Secretary of the Interior pursuant to section 479a-1 of title 25, united states code.</u></p> <p><u>(37) TRIBAL CONSORTIUM.-- The term “tribal consortium” means two or more tribal governments that have joined together for the purpose of entering into a contract or agreement with the Secretary or the Secretary of Transportation under section 202(d) of this title or under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 <i>et seq.</i>), as amended, the Tribal Transportation Self Governance Program or section 202(d)(5) of this title.</u></p>
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<p>(41) respectively; and</p> <p>(4) inserting after paragraph (36) (as redesignated by paragraph (3)) the following:</p> <p>“(37) TRIBAL CONSORTIUM.-- The term “tribal consortium” means two or more tribal governments that have joined together for the purpose of entering into a contract or agreement with the Secretary or the Secretary of Transportation under section 202(d) of this title or under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 <i>et seq.</i>), as amended, the Tribal Transportation Self Governance Program or section 202(d)(5) of this title.”</p>	
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**Rationale:** This section provides that the terms “Indian tribe,” “Indian tribal government” and “tribal government” have the same meaning as under the Indian Self-Determination and Education Assistance Act except that these terms include “tribal organizations” as defined under ISDEAA and tribal consortia.

<p><b>Section 19XX. NATIVE PREFERENCE</b></p> <p>(a) PREEMPTION.—Section 140(d) of such title is amended to read as follows:</p> <p>“(d) NATIVE PREFERENCE.—Notwithstanding any provision of State law, regulation, program guideline or policy directive, for projects carried out on, near, or around Indian Reservations and Tribal communities and consistent with section 703(i) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2(i)), States shall to the greatest extent feasible give—</p>	<p><b>23 U.S.C. § 140(d) to read:</b></p> <p>(D) <del>INDIAN EMPLOYMENT</del> <u>NATIVE PREFERENCE</u>.--<del>Consistent with section 703(i) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2(i)), nothing in this section shall preclude the preferential employment of Indians living on or near a reservation on projects and contracts on Indian reservation roads. States may implement a preference for employment of Indians on projects carried out under this title near Indian reservations. The Secretary shall cooperate with Indian tribal governments and the States to implement this subsection. Notwithstanding any provision of</del></p>
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<p>“(1) preferences and opportunities for training and employment to American Indians and Alaska Natives; and</p> <p>“(2) preference in the award of subcontracts and subgrants to American Indian/Alaska Native organizations and to American Indian/Alaska Native-owned economic enterprises as defined in section 1452 of title 25, United States Code.”</p>	<p><u>State law, regulation, program guideline or policy directive, for projects carried out on, near, or around Indian Reservations and Tribal communities and consistent with section 703(i) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2(i)), States shall to the greatest extent feasible require that—</u></p> <p><u>(1) preferences and opportunities for training and employment to American Indians and Alaska Natives; and</u></p> <p><u>(2) preference in the award of subcontracts and subgrants to American Indian/Alaska Native organizations and to American Indian/Alaska Native-owned economic enterprises as defined in section 1452 of title 25, United States Code.</u></p>
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**Rationale:** Current federal law authorizes – but does not require – State governments to apply Indian preference in employment on Federal Aid projects nears Indian communities. Notwithstanding this authority, many State departments of transportation currently do not apply Indian preference out of concern that it may conflict with State civil rights laws. Officials in these States have often indicated that, if they had the legal authority to do so, they would prefer to apply Indian preference. This provision requires States to apply Indian preference in employment and subcontracting to the greatest extent feasible and overrides State law or regulations to the contrary.

<p><b>Section 1401. HIGHWAY SAFETY IMPROVEMENT PROGRAM</b></p> <p>(a) SAFETY IMPROVEMENT.— Section 148 of title 23, United States Code is amended in subparagraph (f) by striking “2005” in clause (1) and inserting “2009” and by adding at the end the following:</p>	<p><b>23 U.S.C. § 148(f)(1) to read:</b></p> <p>(1) In General.— After making an apportionment under section 104(b)(5) for a fiscal year beginning after September 30, <del>2005</del> <u>2009</u>, the Secretary shall ensure, from amounts made available to carry out this section for such fiscal year, that a total of \$90,000,000 of such apportionment is set aside by the States,</p>
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“(3) High Risk Tribal Roads.—Of the amount apportioned for each fiscal year by subsection (f)(1) of this section, the Secretary shall set aside 2 percent for each fiscal year for grants for tribal governments for any purpose eligible under this section. The Secretary shall issue terms and conditions for such grants in accordance with the negotiated rulemaking procedure established under section 202(d)(8) of this title but the lack of promulgated regulations shall not limit the effect of this subsection.

“(A) The Federal share of the cost of a project under this subsection shall be 100 percent.

“(B) The Secretary shall award grants to a tribal governments under this section in accordance with and pursuant to authority under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*), as amended, including the Tribal Transportation Self-Governance Program or section 202(d)(5) of this title.”

proportionally according to the share of each State of the total amount so apportioned, for use only for construction and operational improvements on high risk rural roads.

(2) Special rule.—A State may use funds apportioned to the State pursuant to this subsection for any project under this section if the State certifies to the Secretary that the State has met all of State needs for construction and operational improvements on high risk rural roads.

(3) High Risk Rural Tribal Roads.—Of the amount apportioned for each fiscal year by subsection (f)(1) of this section, the Secretary shall set aside 2 percent for each fiscal year for grants for tribal governments for any purpose eligible under this section. The Secretary shall issue terms and conditions for such grants in accordance with the negotiated rulemaking procedure under section 202(d)(8) of this title (negotiated rulemaking).

(A) The Federal share of the cost of a project under this subsection shall be 100 percent.

(B) The Secretary shall award grants to a tribal governments under this section in accordance with and pursuant to authority under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*), as amended, including the Tribal Transportation Self-Governance Program or section 202(d)(5) of this title.

**Rationale:** Native Americans suffer injury and death driving and walking along reservation roadways at rates far above the national average. Native Americans also have the highest rates of pedestrian injury and death per capita of any racial or ethnic group in the

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United States. Under SAFETEA-LU, Congress authorized \$1.275 billion in FY 2008 alone for the State administered High Risk Rural Road Program, but tribal governments have been virtually ignored in these safety programs. Little or none of this State-administered funding ever makes it to tribal communities. This section requires that two percent of the funding available for the High Risk Rural Roads Program be set aside for direct grants for tribal governments for any purpose for which funds would otherwise be available under this program. As the Tribal Transit Grant Program has shown, tribal governments are better able to access funds made directly available from the U.S. Department of Transportation rather than through State governments and, when these funds are available, tribal governments make good, cost-effective use of these funds.

<p><b>Section 1404. HIGHWAY SAFETY IMPROVEMENT PROGRAM</b></p> <p>(c) APPORTIONMENT OF FUNDS.— Section 1404(c) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, 119 Stat. 1228, is amended 148 of title 23, United States Code is amended by adding at the end the following:</p> <p>“(5) Tribal Safe Routes to Schools to Schools.—Of the amount apportioned for each fiscal year by subsection (f)(1) of this section, the Secretary shall set aside \$10,000,000 for each fiscal year for grants for tribal governments for any purpose eligible under this section.</p> <p>“(A) The Federal share of the cost of a project under this subsection shall be 100 percent.</p> <p>“(B) The Secretary shall award grants to a tribal governments under this section in accordance with and pursuant to authority under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 <i>et seq.</i>), as amended, including the</p>	<p><b>SAFETEA-LU, Section 1404(c) to read:</b></p> <p>(c) APPORTIONMENT OF FUNDS.—</p> <p>(1) IN GENERAL.—Subject to paragraphs (2), (3), and (4), amounts made available to carry out this section for a fiscal year shall be apportioned among the States in the ratio that—</p> <p>(A) the total student enrollment in primary and middle schools in each State; bears to</p> <p>(B) the total student enrollment in primary and middle schools in all States.</p> <p>(2) MINIMUM APPORTIONMENT.—No State shall receive an apportionment under this section for a fiscal year of less than \$1,000,000.</p> <p>(3) SET-ASIDE FOR ADMINISTRATIVE EXPENSES.—Before apportioning under this subsection amounts made available to carry out this section for a fiscal year, the Secretary</p>
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<p>Tribal Transportation Self-Governance Program or section 202(d)(5) of this title.”</p>	<p>shall set aside not more than \$3,000,000 of such amounts for the administrative expenses of the Secretary in carrying out this subsection.</p> <p>(4) DETERMINATION OF STUDENT ENROLLMENTS.— Determinations under this subsection concerning student enrollments shall be made by the Secretary.</p> <p><u>(5) Tribal Safe Routes to Schools to Schools.—Of the amount apportioned for each fiscal year by subsection (f)(1) of this section, the Secretary shall set aside \$10,000,000 for each fiscal year for grants for tribal governments for any purpose eligible under this section.</u></p> <p><u>(A) The Federal share of the cost of a project under this subsection shall be 100 percent.</u></p> <p><u>(B) The Secretary shall award grants to a tribal governments under this section in accordance with and pursuant to authority under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 <i>et seq.</i>), as amended, including the Tribal Transportation Self-Governance Program or section 202(d)(5) of this title.</u></p>
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**Rationale:** The Safe Routes to Schools Program was created to combat the increased rates in childhood obesity and associated health problems by making biking and walking to schools a more appealing alternative and authorizes funds for projects that encourage school children to walk and bike to school. Tribal governments can currently only receive funding under this Program as subrecipients of States. This provision sets aside \$10,000,000 of the funding appropriated for this program (which represents approximately 5.5% of the funding authorized for this program in FY 2009) for tribal governments and authorizes tribes to apply for

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these funds directly to the Secretary of Transportation rather than through the States. As the Tribal Transit Grant Program has shown, tribal governments are better able to access funds made directly available from the U.S. Department of Transportation rather than through State governments and, when these funds are available, tribal governments make good, cost-effective use of these funds.

<p><b>Section 1502. HIGHWAYS FOR LIFE PILOT PROGRAM</b></p> <p>(b) PROJECTS.—Section 1502(b) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, 119 Stat. 1236-1238, is amended</p> <p>(1) in subparagraph (1)</p> <p>(i) by inserting after “State” the first time it appears: “or a tribal government”;</p> <p>(ii) by inserting after “State” the second time it appears: “or the tribal government”;</p> <p>(2) in subparagraph (2)(A) to read as follows:</p> <p>“(A) constructs, reconstructs, or rehabilitates a route or connection</p> <p>“(i) on a Federal-aid highway eligible for assistance under chapter 1 of title 23, United States Code; or</p> <p>“(ii) on a route included in the National tribal transportation facility inventory.”</p>	<p><b>SAFETEA-LU, Section 1502(b)(1) to read:</b></p> <p>(1) APPLICATIONS.—To be eligible to participate in the pilot program, a State <u>or a tribal government</u> shall submit to the Secretary an application that is in such form and contains such information as the Secretary requires. Each application shall contain a description of proposed projects to be carried by the State <u>or the tribal government</u> under the pilot program.</p> <p><b>SAFETEA-LU, Section 1502(b)(1) to read:</b></p> <p>(A) constructs, reconstructs, or rehabilitates a route or connection</p> <p>(i) on a Federal-aid highway eligible for assistance under chapter 1 of title 23, United States Code; <u>or</u></p> <p>“(ii) on a route included in the National tribal transportation facility inventory.”</p>
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<p>(3) in subparagraph (b)(6) to read as follows:</p> <p>“(6) PROJECT SELECTIONS.—In the period of fiscal years 2010 through 2015, the Secretary, to the maximum extent possible, shall approve</p> <p>    “(A) at least 1 project in each State for participation in the pilot program and for financial assistance under paragraph (5) if the State submits an application and the project meets the eligibility requirements and selection criteria under this subsection;</p> <p>    “(B) at least 2 projects annually for projects submitted by tribal governments for participation in the pilot program and for financial assistance under paragraph (5) if any tribal governments submit applications and if at least 2 projects meet the eligibility requirements and selection criteria under this subsection.”</p> <p>(4) in subparagraph (b)(7) to read as follows:</p> <p>“(7) MAXIMUM NUMBER OF PROJECTS.—The maximum number of projects for which the Secretary may allocate funds under this subsection in a fiscal year is 17.”</p>	<p><b>SAFETEA-LU, Section 1502(b)(6) to read:</b></p> <p>(6) PROJECT SELECTIONS.—In the period of fiscal years <del>2005</del> <u>2010</u> through <del>2009</del> <u>2015</u>, the Secretary, to the maximum extent possible, shall approve</p> <p>    <u>“(A) at least 1 project in each State for participation in the pilot program and for financial assistance under paragraph (5) if the State submits an application and the project meets the eligibility requirements and selection criteria under this subsection;</u></p> <p>    <u>“(B) at least 2 projects annually for projects submitted by tribal governments for participation in the pilot program and for financial assistance under paragraph (5) if any tribal governments submit applications and if at least 2 projects meet the eligibility requirements and selection criteria under this subsection.</u></p> <p><b>SAFETEA-LU, Section 1502(b)(7) to read:</b></p> <p>(7) MAXIMUM NUMBER OF PROJECTS.—The maximum number of projects for which the Secretary may allocate funds under this subsection in a fiscal year is <del>15</del> <u>17</u>.</p>
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**Rationale:** The Highways for Life Program provides grants to States for projects that use innovative technologies and practices to accomplish the rapid construction of efficient and safe highways and bridges. The purpose of this program is to promote state-of-the-art technologies, elevated performance standards, and new business practices in the highway construction process that result in improved safety, faster construction, reduced congestion from construction, and improved quality and user satisfaction. Far too often, Tribes are left out of this and similar programs under the mistaken belief that tribal governments are



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account of the tribal infrastructure bank established under this section may be commingled with Federal funds contributed or credited to any other account of such bank.

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

“(A) HIGHWAY ACCOUNT.—For the Highway Account of the tribal infrastructure bank, out of the Highway Trust Fund (other than the Mass Transit Account), \$8,500,000 for each of fiscal years 2010 through 2015.

“(B) TRANSIT ACCOUNT.—For the Transit Account of the tribal infrastructure bank, out of the Mass Transit Account, \$1,500,000 for each of fiscal years 2010 through 2015.

“(3) CAPITAL GRANTS

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

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

“(d) FORMS OF ASSISTANCE.—The tribal infrastructure bank established under this section may make loans or provide other forms of credit assistance to a tribal government in an amount

(2) The following sums are authorized to be appropriated:

(A) HIGHWAY ACCOUNT.—For the Highway Account of the tribal infrastructure bank, out of the Highway Trust Fund (other than the Mass Transit Account), \$8,500,000 for each of fiscal years 2010 through 2015.

(B) TRANSIT ACCOUNT.—For the Transit Account of the tribal infrastructure bank, out of the Mass Transit Account, \$1,500,000 for each of fiscal years 2010 through 2015.

(3) CAPITAL GRANTS

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

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

(d) FORMS OF ASSISTANCE.—The tribal infrastructure bank established under this section may make loans or provide other forms of credit assistance to a tribal government in an amount equal to all or a part of the cost of carrying out a project eligible for assistance under this section. The amount of any loan or other form of credit assistance provided for the project may be subordinated to any other debt financing for the project. Initial assistance provided with respect to a project from Federal funds

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equal to all or a part of the cost of carrying out a project eligible for assistance under this section. The amount of any loan or other form of credit assistance provided for the project may be subordinated to any other debt financing for the project. Initial assistance provided with respect to a project from Federal funds deposited into an infrastructure bank under this section may not be made in the form of a grant.

“(e) ELIGIBLE PROJECTS.--Subject to subsection (d), funds in the tribal infrastructure bank established under this section may be used only to provide assistance for projects eligible for assistance under title 23, United States Code and chapter 53 of title 49, United States Code, and any other projects relating to surface transportation that the Secretary determines to be appropriate.

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

“(g) INFRASTRUCTURE BANK REQUIREMENTS. --The federally chartered corporation shall—

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

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

        “(A) credited to the account;

deposited into an infrastructure bank under this section may not be made in the form of a grant.

(e) ELIGIBLE PROJECTS.--Subject to subsection (d), funds in the tribal infrastructure bank established under this section may be used only to provide assistance for projects eligible for assistance under title 23, United States Code and chapter 53 of title 49, United States Code, and any other projects relating to surface transportation that the Secretary determines to be appropriate.

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

(g) INFRASTRUCTURE BANK REQUIREMENTS. --The federally chartered corporation shall—

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

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

        (A) credited to the account;

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

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<p>“(B) available for use in providing loans and other forms of credit assistance to projects eligible for assistance from the account; and</p> <p>“(C) invested in United States Treasury securities, bank deposits, or such other financing instruments as the Secretary may approve to earn interest to enhance the leveraging of projects assisted by the bank;</p> <p>“(4) ensure that any loan from the bank will bear interest at or below market interest rates, as determined by the federally chartered corporation, to make the project that is the subject of the loan feasible;</p> <p>“(5) ensure that repayment of any loan from the bank will commence not later than 5 years after the project has been completed or, in the case of a highway project, the facility has opened to traffic, whichever is later;</p> <p>“(6) set a maximum term for the repayment of loans such that the Tribal Infrastructure Bank can be self-sustaining;</p> <p>“(7) ensure that the term for repaying any loan will in no event exceed 20 years after the date of the first payment on the loan; and</p> <p>“(8) require the bank to make an annual report to the Secretary on its status no later than September 30 of each year and such other reports as the Secretary may require under guidelines issued to carry out this section.</p>	<p><u>(C) invested in United States Treasury securities, bank deposits, or such other financing instruments as the Secretary may approve to earn interest to enhance the leveraging of projects assisted by the bank;</u></p> <p><u>(4) ensure that any loan from the bank will bear interest at or below market interest rates, as determined by the federally chartered corporation, to make the project that is the subject of the loan feasible;</u></p> <p><u>(5) ensure that repayment of any loan from the bank will commence not later than 5 years after the project has been completed or, in the case of a highway project, the facility has opened to traffic, whichever is later;</u></p> <p><u>(6) set a maximum term for the repayment of loans such that the Tribal Infrastructure Bank can be self-sustaining;</u></p> <p><u>(7) ensure that the term for repaying any loan will in no event exceed 20 years after the date of the first payment on the loan; and</u></p> <p><u>(8) require the bank to make an annual report to the Secretary on its status no later than September 30 of each year and such other reports as the Secretary may require under guidelines issued to carry out this section.</u></p> <p><u>(h) APPLICABILITY OF FEDERAL LAW.--</u></p> <p><u>(1) IN GENERAL.--The requirements of section 202(d) of this title that would otherwise apply to funds made available to tribal</u></p>
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<p>“(h) APPLICABILITY OF FEDERAL LAW.--</p> <p>“(1) IN GENERAL.--The requirements of section 202(d) of this title that would otherwise apply to funds made available to a tribal government under section 202(d) of this title and projects assisted with those funds shall apply to--</p> <p>“(A) funds authorized to be contributed to the tribal infrastructure bank under this section; and</p> <p>“(B) projects assisted by the bank through the use of the funds, except to the extent that the Secretary determines that any requirement of such section is not consistent with the objectives of this section.</p> <p>“(2) REPAYMENTS.--The requirements of this title and title 49, United States Code shall apply to repayments from non-Federal sources to an infrastructure bank from projects assisted by the bank. Such a repayment shall be considered to be Federal funds.</p> <p>“(i) UNITED STATES NOT OBLIGATED.--The deposit of Federal funds into an infrastructure bank established under this section shall not be construed as a commitment, guarantee, or obligation on the part of the United States to any third party, nor shall any third party have any right against the United States for payment solely by virtue of the contribution. Any security or debt-financing instrument issued by the infrastructure bank shall expressly state that the security or instrument does not constitute a commitment, guarantee, or obligation of the United States.”</p>	<p><u>governments under section 202(d) of this title and projects assisted with those funds shall apply to--</u></p> <p><u>(A) funds authorized to be contributed to the tribal infrastructure bank under this section; and</u></p> <p><u>(B) projects assisted by the bank through the use of the funds, except to the extent that the Secretary determines that any requirement of such section is not consistent with the objectives of this section.</u></p> <p><u>(2) REPAYMENTS.--The requirements of this title and title 49, United States Code shall apply to repayments from non-Federal sources to an infrastructure bank from projects assisted by the bank. Such a repayment shall be considered to be Federal funds.</u></p> <p><u>(i) UNITED STATES NOT OBLIGATED.--The deposit of Federal funds into an infrastructure bank established under this section shall not be construed as a commitment, guarantee, or obligation on the part of the United States to any third party, nor shall any third party have any right against the United States for payment solely by virtue of the contribution. Any security or debt-financing instrument issued by the infrastructure bank shall expressly state that the security or instrument does not constitute a commitment, guarantee, or obligation of the United States.</u></p>
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**Rationale:** This provision creates a Tribal Infrastructure Bank (“TIB”), modeled in part on the State Infrastructure Banks authorized by Congress in the National Highway System Designation Act of 1995. The TIB, which would be funded at a level of \$10 million annually, would provide loans and other credit enhancement device, such as guarantees for private loans, to Tribes to finance transportation projects. Eligible projects would include projects that are otherwise eligible for assistance under title 23, United States Code or chapter 53 of title 49, United States Code, and any other projects relating to surface transportation that the Secretary of Transportation determines to be appropriate. The TIB would charge a rate of interest on loans that is at or below market rates. The TIB would be self-sustaining: the repayment term of loans will be set such that funds made available when tribes repay existing loans can be “recycled” into new loans. By making low interest loans and other credit enhancement mechanisms available, the TIB would give Tribes significantly increased flexibility in project selection and financial management.

<p><b>Section 2010. MOTORCYCLIST SAFETY</b></p> <p>(a) AUTHORITY TO MAKE GRANTS.—Section 2010(f)(4) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, 119 Stat. 1537, is amended to read as follows:</p> <p>“(4) STATE.—The term “State” means any of the 50 States, the District of Columbia, Puerto Rico and Indian tribal governments.”<sup>4</sup></p>	<p><b>SAFETEA-LU, Section 2010(f)(4) to read:</b></p> <p>(4) STATE.—The term “State” <del>has the same meaning such term has in section 101(a) of title 23, United States Code.</del> <u>means any of the 50 States, the District of Columbia, Puerto Rico and Indian tribal governments.</u></p>
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**Rationale:** Under SAFETEA-LU, Congress authorized \$6 million each year for FY 2006 - FY 2008 and \$7 million for FY 2009 for grants for motorcyclist safety training and motorcyclist awareness programs. This provision makes tribal governments eligible direct

<sup>4</sup> **Note:** As a rule, when this legislative package makes Indian tribal governments eligible direct recipients of Federal transportation grants, the package includes a separate set of provisions that modify the program to make it more tribally-appropriate,. With respect to Motorcyclist Safety Program grants, for reasons of drafting efficiency we opted simply to include Indian tribal governments within the definition of States. We recognize, of course, that in most respects, Indian tribal governments have a history wholly distinct from that of States and this provision is not intended to suggest otherwise.

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recipients of such grants on the same basis as States.

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<p><b>Section 20XX. NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION TRIBAL SAFETY PROGRAM</b></p> <p>(a) [NEW PROGRAM] NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION TRIBAL SAFETY PROGRAM.—Chapter 4 of title 23, United States Code is amended by adding at the end the following:</p> <p>“§ 413. TRIBAL SAFETY PROGRAM.—</p> <p>(a) ESTABLISHMENT.—The Secretary shall establish and implement a National Highway Traffic Safety Administration Tribal Safety Program in accordance with this section.</p> <p>(b) PURPOSE.—The purpose of the National Highway Traffic Safety Administration Tribal Safety Program shall be to address driver, passenger and pedestrian behavioral issues that contribute to death and injury on tribal transportation systems.</p> <p>(c) FUNDING.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) \$50,000,000 for each of fiscal years 2010 through 2015 to carry out this section.</p> <p>“(d) GRANTS.—</p> <p>“(1) The Secretary shall make grants to tribal governments from funds authorized to be appropriated under this section to carry out eligible projects and activities.</p>	<p><b>23 U.S.C. § 413 to read:</b></p> <p><u>§ 413. TRIBAL SAFETY PROGRAM.—</u></p> <p><u>(a) ESTABLISHMENT.—The Secretary shall establish and implement a National Highway Traffic Safety Administration Tribal Safety Program in accordance with this section.</u></p> <p><u>(b) PURPOSE.—The purpose of the National Highway Traffic Safety Administration Tribal Safety Program shall be to address driver, passenger and pedestrian behavioral issues that contribute to death and injury on tribal transportation systems.</u></p> <p><u>(c) FUNDING.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) \$50,000,000 for each of fiscal years 2010 through 2015 to carry out this section.</u></p> <p><u>(d) GRANTS.—</u></p> <p><u>(1) The Secretary shall make grants to tribal governments from funds authorized to be appropriated under this section to carry out eligible projects and activities.</u></p> <p><u>(2) The Secretary shall develop requirements for the award of grants under this section pursuant to regulations issued in accordance with the negotiated rulemaking procedure established under section 202(d)(8) of this title of this Act, but the lack of promulgated regulations shall not limit the effect of this section.</u></p>
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“(2) The Secretary shall develop requirements for the award of grants under this section pursuant to regulations issued in accordance with the negotiated rulemaking procedure established under section 202(d)(8) of this title of this Act, but the lack of promulgated regulations shall not limit the effect of this section.

“(3) The Secretary shall award grants under this subsection in accordance with and pursuant to authority under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*), as amended, including the Tribal Transportation Self-Governance Program, or paragraph (5) of this subsection.

“(e) ELIGIBLE PROJECTS AND ACTIVITIES.—A tribal government may use funds from a grant under this section for any project or activity eligible for assistance under this chapter, including, but not limited to projects and activities eligible for assistance under sections 1404 (Safe Routes to Schools to Schools Program), 1411 (Roadway Safety Program), 1906 (Grants to Prohibit Racial Profiling), 2004 (Occupant protection incentive grants); 2005 (Safety Belt performance grants, 2006 (State traffic safety information system improvements), 2007 (Alcohol-impaired driving countermeasures), 2009 (High Visibility Safety Program), 2010 (Motorcyclist Safety Program), 20011 (Child safety and child booster seat incentive grants) of Public Law 109-59 and any project or activity intended to—

“(1) to reduce injuries and deaths resulting from motor vehicles being driven in excess of posted speed limits;

(3) The Secretary shall award grants under this subsection in accordance with and pursuant to authority under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*), as amended, including the Tribal Transportation Self-Governance Program, or paragraph (5) of this subsection.

(e) ELIGIBLE PROJECTS AND ACTIVITIES.—A tribal government may use funds from a grant under this section for any project or activity eligible for assistance under this chapter, including, but not limited to projects and activities eligible for assistance under sections 1404 (Safe Routes to Schools to Schools Program), 1411 (Roadway Safety Program), 1906 (Grants to Prohibit Racial Profiling), 2004 (Occupant protection incentive grants); 2005 (Safety Belt performance grants, 2006 (State traffic safety information system improvements), 2007 (Alcohol-impaired driving countermeasures), 2009 (High Visibility Safety Program), 2010 (Motorcyclist Safety Program), 20011 (Child safety and child booster seat incentive grants) of Public Law 109-59 and any project or activity intended to—

(1) to reduce injuries and deaths resulting from motor vehicles being driven in excess of posted speed limits;

(2) to encourage the proper use of occupant protection devices (including the use of safety belts and child restraint systems) by occupants of motor vehicles;

(3) to reduce deaths and injuries resulting from persons driving motor vehicles while impaired by alcohol or a controlled substance;

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<p>“(2) to encourage the proper use of occupant protection devices (including the use of safety belts and child restraint systems) by occupants of motor vehicles;</p> <p>“(3) to reduce deaths and injuries resulting from persons driving motor vehicles while impaired by alcohol or a controlled substance;</p> <p>“(4) to prevent accidents and reduce deaths and injuries resulting from accidents involving motor vehicles and motorcycles;</p> <p>“(5) to reduce injuries and deaths resulting from accidents involving school buses;</p> <p>“(6) to reduce accidents resulting from unsafe driving behavior (including aggressive or fatigued driving and distracted driving arising from the use of electronic devices in vehicles);</p> <p>“(7) to improve law enforcement services in motor vehicle accident prevention, traffic supervision, and post-accident procedures; or</p> <p>“(8) to improve the collection, compilation, analysis and management of traffic safety data;</p> <p>“(9) to develop and implement a tribal transportation safety planning process, except that the requirements of section 148, title 23, United States Code shall not apply to</p>	<p><u>(4) to prevent accidents and reduce deaths and injuries resulting from accidents involving motor vehicles and motorcycles;</u></p> <p><u>(5) to reduce injuries and deaths resulting from accidents involving school buses;</u></p> <p><u>(6) to reduce accidents resulting from unsafe driving behavior (including aggressive or fatigued driving and distracted driving arising from the use of electronic devices in vehicles);</u></p> <p><u>(7) to improve law enforcement services in motor vehicle accident prevention, traffic supervision, and post-accident procedures; or</u></p> <p><u>(8) to improve the collection, compilation, analysis and management of traffic safety data;</u></p> <p><u>(9) to develop and implement a tribal transportation safety planning process, except that the requirements of section 148, title 23, United States Code shall not apply to the tribal transportation planning process.</u></p> <p><u>(f) The fact that a project or activity receives or has received funding or support from sources other than the Highway Trust Fund and from agencies other than the Department of Transportation shall not render the project or activity ineligible for funding under this section provided the project or activity would otherwise be eligible for funding under this section.</u></p>
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<p>the tribal transportation planning process.</p> <p>“(f) The fact that a project or activity receives or has received funding or support from sources other than the Highway Trust Fund and from agencies other than the Department of Transportation shall not render the project or activity ineligible for funding under this section provided the project or activity would otherwise be eligible for funding under this section.</p> <p>“(g) FEDERAL SHARE.—The Federal share of the cost of a project or activity under this section shall be 100 percent.”</p>	<p><u>(g) FEDERAL SHARE.—The Federal share of the cost of a project or activity under this section shall be 100 percent.</u></p>
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**Rationale:** Motor vehicle injuries are the leading cause of death for Native Americans ages 1-34 and the third leading cause of death overall for Native Americans. These numbers far exceed the rates of such injuries among the non-native population. Notwithstanding these frightening statistics, under SAFETEA-LU tribal governments have very little access to federal funds that are available to address significant transportation safety problems. For example, of the approximately \$700 million Congress authorized for FY 2008 for safety programs administered by the National Highway Traffic Safety Administration, less than \$5 million is set-aside for tribal safety programs. This provision creates a Tribal Safety Program within the National Highway Traffic Safety Administration funded at \$50 million annually to provide grants to tribal governments to address driver, passenger and pedestrian behavioral issues that contribute to death and injury on tribal transportation systems.

<p><b>Section 3005. METROPOLITAN TRANSPORTATION PLANNING</b></p> <p>(a) IN GENERAL.—Section 5303(f)(3)(C)(ii)(II) is amended to read as follows:</p> <p>“(II) Funding.--For fiscal year 2008 and each fiscal year thereafter, in addition to other funds made available to the metropolitan planning organization for the Lake Tahoe region under this title and chapter 53 of title 49, United States Code prior</p>	<p><b>23 U.S.C. § 5303(f)(C)(ii)(II) to read:</b></p> <p>(II) Funding.--For fiscal year 2008 and each fiscal year thereafter, in addition to other funds made available to the metropolitan planning organization for the Lake Tahoe region under this title and chapter 53 of title 49, United States Code prior to any allocation under section 202(a)-(c) of this title and notwithstanding the allocation provisions of section 202(a)-(c), the Secretary shall set aside 1/2 of 1 percent of all funds</p>
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<p>to any allocation under section 202(a)-(c) of this title and notwithstanding the allocation provisions of section 202(a)-(c), the Secretary shall set aside 1/2 of 1 percent of all funds authorized to be appropriated for such fiscal year to carry out the public lands highways, park roads and parkways and refuge roads programs under section 204 and shall make such funds available to the metropolitan planning organization for the Lake Tahoe region to carry out the transportation planning process, environmental reviews, preliminary engineering, and design to complete environmental documentation for transportation projects for the Lake Tahoe region under the Tahoe Regional Planning Compact as consented to in Public Law 96-551 (94 Stat. 3233) and this paragraph.”</p>	<p>authorized to be appropriated for such fiscal year to carry out <u>the public lands highways, park roads and parkways and refuge roads programs</u> under section 204 and shall make such funds available to the metropolitan planning organization for the Lake Tahoe region to carry out the transportation planning process, environmental reviews, preliminary engineering, and design to complete environmental documentation for transportation projects for the Lake Tahoe region under the Tahoe Regional Planning Compact as consented to in Public Law 96-551 (94 Stat. 3233) and this paragraph.</p>
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**Rationale:** Under the SAFETEA-LU Technical Corrections Act of 2008, Pub. L. 110-244, the Lake Tahoe Metropolitan Planning Organization is funded by a set-aside of funds from the Federal Lands Highways Program, including the Indian Reservation Roads Program. Federal officials have estimated that this set-aside will reduce IRR Program funds by approximately \$2,000,000 pre year and this dedicated amount will increase as funding for the IRR Program increases. Under the proposed provision and section 6001, IRR Program funds would not be included in the Lake Tahoe Metropolitan Planning Organization set-aside.

<p><b>Section 3013. FORMULA GRANTS FOR OTHER THAN URBANIZED AREAS</b></p> <p>(b) GENERAL AUTHORITY.— Section 5311(b)(3) of title 49, United State Code is amended by adding at the end the following:</p> <p>“(D) GRANTS TO TRIBAL GOVERNMENTS AND INDIAN TECHNICAL CENTERS.—Of the funds made available to carry out subparagraph</p>	<p><b>49 U.S.C. § 5311(b)(3) to read:</b></p> <p>(3) RURAL TRANSPORTATION ASSISTANCE PROGRAM.--</p> <p>(A) IN GENERAL.--The Secretary shall carry out a rural transportation assistance program in other than urbanized areas.</p>
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<p>(B), \$1,000,000 annually shall be available for grants and contracts with tribal governments and Indian technical centers operating under section 503(b) of title 23, United States code for transportation research, technical assistance, training, and related support services related to the provision of transit services in tribal communities.”</p>	<p>(B) GRANTS AND CONTRACTS.--In carrying out this paragraph, the Secretary may use not more than 2 percent of the amount made available to carry out this section to make grants and contracts for transportation research, technical assistance, training, and related support services in other than urbanized areas.</p> <p>(C) PROJECTS OF A NATIONAL SCOPE.--Not more than 15 percent of the amounts available under subparagraph (B) may be used by the Secretary to carry out projects of a national scope, with the remaining balance provided to the States.</p> <p><u>(D) GRANTS TO TRIBAL GOVERNMENTS AND INDIAN TECHNICAL CENTERS.—Of the funds made available to carry out subparagraph (B), \$1,000,000 annually shall be available for grants and contracts with tribal governments and Indian technical centers operating under section 503(b) of title 23, United States code for transportation research, technical assistance, training, and related support services related to the provision of transit services in tribal communities.</u></p>
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**Rationale:** As tribal transit systems continue to grow and flourish, tribal governments and Tribal Technical Assistance Program centers (TTAPs) need additional funding to provide training and technical assistance to tribal leaders and transit officials. Under SAFETEA-LU, Congress now provides roughly \$9 million annually to State governments to provide research, training and technical assistance services to rural transit programs, but almost none of these training resources find their way to tribal communities. To address this problem, this provision sets aside \$1,000,000 for direct grants and contracts with tribal governments and TTAPs to ensure federal training and technical assistance opportunities are available to tribal governments and communities.

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**Section 3013. FORMULA GRANTS FOR OTHER THAN URBANIZED AREAS**

(c) APPORTIONMENTS.—Section 5311(c) of title 49, United State Code is amended by striking subsection (1) and inserting the following:

“(1) Public transportation on Indian reservations.— Notwithstanding any other provision of law, of the amounts made available or appropriated for each fiscal year pursuant to subsections (a)(1)(C)(v) and (b)(2)(G) of section 5338, the following amounts shall be apportioned for grants to Indian tribes for any purpose eligible under this section, including planning grants of up to \$50,000 per eligible tribe, in accordance with and pursuant to authority under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*), as amended, including the Tribal Transportation Self-Governance Program or section 202(d)(5) of this title and under such terms and conditions not in conflict therewith as may be established by the Secretary:

- “(A) \$35,000,000 for fiscal year 2010.
- “(B) \$45,000,000 for fiscal year 2011.
- “(C) \$55,000,000 for fiscal year 2012.
- “(D) \$65,000,000 for fiscal year 2013.
- “(E) \$75,000,000 for fiscal year 2014.
- “(F) \$85,000,000 for fiscal year 2015.”

49 U.S.C. § 5311(c)(1) to read:

(1) Public transportation on Indian reservations.— Notwithstanding any other provision of law, of the amounts made available or appropriated for each fiscal year pursuant to subsections (a)(1)(C)(v) and (b)(2)(G) of section 5338, the following amounts shall be apportioned for grants to Indian tribes for any purpose eligible under this section, including planning grants of up to \$50,000 per eligible tribe, in accordance with and pursuant to authority under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*), as amended, including the Tribal Transportation Self-Governance Program, or section 202(d)(5) of this title and under such terms and conditions not in conflict therewith as may be established by the Secretary:

- ~~“(A) \$8,000,000 for fiscal year 2006.~~
- ~~“(B) \$10,000,000 for fiscal year 2007.~~
- ~~“(C) \$12,000,000 for fiscal year 2008.~~
- ~~“(D) \$15,000,000 for fiscal year 2009.~~
- “(A) \$35,000,000 for fiscal year 2010.
- “(B) \$45,000,000 for fiscal year 2011.
- “(C) \$55,000,000 for fiscal year 2012.
- “(D) \$65,000,000 for fiscal year 2013.
- “(E) \$75,000,000 for fiscal year 2014.
- “(F) \$85,000,000 for fiscal year 2015.

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**Rationale:** In its initial years, the Tribal Transit Grant Program (Public Transportation on Indian reservations) has been highly successful and, in the first year of operation, awarded transit funding to 63 tribes. The funding awarded thus far has, however, barely scratched the surface of transit needs in tribal communities. To address these needs and to increase access to employment, health services and business opportunities for Tribal members, this section increases the funding available for this program to \$35 million for FY2010 with stepped increases of \$10 million for every year thereafter to \$85 million.

This section, in conjunction with section 1119(xx), Conforming Amendments, of this proposed legislation, also authorizes the Secretary to award grants under this section to tribes by means of contracts or agreements authorized by the Indian Self-Determination and Education Assistance Act (ISDEAA), Pub. L. 93-638 (1975) (codified as amended at 25 U.S.C. § 450 et seq., including the Tribal Transportation Self-Governance Program or under agreements authorized by 23 U.S.C. § 202(d)(5). Unlike the grant award forms and requirements currently used by FTA to administer the Tribal Transit Grant Program, contracts, compacts and agreements under ISDEAA and under 23 U.S.C. § 202(d)(5) were developed specifically for the tribal context and tribes have in place administrative systems designed to administer these contracts compacts and agreements. By streamlining this aspect of the administration of Tribal Transit grants, more transit funds are used to provide actual transit services and fewer funds are used in unproductive grant management and administration.

<p><b>Section 5204. TRAINING AND EDUCATION</b></p> <p>(b) LOCAL TECHNICAL ASSISTANCE PROGRAM.—</p> <p>(1) Section 504(b)(2)(D)(ii) of such title is amended to read as follows:</p> <p>“(ii) for each of the twelve regions served by the Bureau of Indian Affairs, a local technical assistance program center designated to</p>	<p><b>23 U.S.C. § 504(b) to read:</b></p> <p><b>(b) Local technical assistance program.—</b></p> <p style="text-align: center;">*****</p> <p><b>(2) Grants, cooperative agreements, and contracts.--</b>The Secretary may make grants and enter into cooperative</p>
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<sup>5</sup> **Note:** The funding authorized in this section is ½ of the total funding provided for the Tribal Technical Assistance Program. The remaining funding flows through the Bureau of Indian Affairs. For that funding, see Section 1119(h), above.

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provide transportation technical assistance to Indian tribal governments; and”

(2) Section 504(b) of such title is amended by adding at the end the following:

“(4) Selection and supervision of tribal technical assistance program centers.—

“(A) For each of the twelve regions served by the technical assistance program centers established under subparagraph (b)(2)(D)(ii) of this section, the Secretary shall establish a joint federal and tribal selection committee with tribal representatives proportionate to the number of tribes within the region to be served by the center. The selection committee shall be authorized to select the grant, cooperative agreement or contract recipient for the region.

“(B) The Federal Highway Administration Office of Corporate and Professional Development shall have sole authority to oversee the tribal technical assistance program centers established under subparagraph (b)(2)(D)(ii) of this section.

“(C) The Secretary shall annually solicit the views of tribal leaders and tribal transportation officials concerning the adequacy of the services provided by the tribal technical assistance program center serving each region.”

(c) FUNDING.— Section 5204 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, 119 Stat. 1791, is amended

agreements and contracts to provide education and training, technical assistance, and related support services to—

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(D) operate, in cooperation with State transportation departments and universities--

(i) local technical assistance program centers designated to provide transportation technology transfer services to rural areas and to urbanized areas; and

(ii) for each of the twelve regions served by the Bureau of Indian Affairs, a local technical assistance program center designated to provide transportation technical assistance to Indian tribal governments; and

(E) allow local transportation agencies and Indian tribal governments, in cooperation with the private sector, to enhance new technology implementation.

(3) **Federal share.**--The Federal share of the cost of activities carried out by the tribal technical assistance centers under paragraph (2)(D)(ii) shall be 100 percent.

**(4) Selection and supervision of tribal technical assistance program centers.—**

(A) For each of the twelve regions served by the technical assistance program centers established under subparagraph (b)(2)(D)(ii) of this section, the Secretary shall

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<p>(1) in subparagraph (c) by striking “,” after the word “Act” and inserting: “ “(1)”;</p> <p>(2) in subparagraph (c) by striking “2005 through 2009” and inserting “2010 through 2015”; and</p> <p>(3) by adding at the end the following: “(2) Of the funds made available under this paragraph, \$2,100,000 shall be available to carry out section 504(b)(2)(D)(ii) of such title.”<sup>5</sup></p>	<p><u>establish a joint federal and tribal selection committee with tribal representatives proportionate to the number of tribes within the region to be served by the center. The selection committee shall be authorized to select the grant, cooperative agreement or contract recipient for the region.</u></p> <p><u>(B) The Federal Highway Administration Office of Corporate and Professional Development shall have sole authority to oversee the tribal technical assistance program centers established under subparagraph (b)(2)(D)(ii) of this section.</u></p> <p><u>(C) The Secretary shall annually solicit the views of tribal leaders and tribal transportation officials concerning the adequacy of the services provided by the tribal technical assistance program center serving each region.</u></p> <p style="text-align: center;">*****</p> <p><b>Section 5204(c) of SAFETEA-LU to read:</b></p> <p>(c) FUNDING.—Of the funds made available by section 5101(a)(2) of this Act, :</p> <p><u>(1) \$11,100,000 for each of fiscal years 2010 through 2016 shall be available to carry out section 504(b) of such title.</u></p> <p><u>(2) Of the funds made available under this paragraph, \$2,100,000 shall be available to carry out section 504(b)(2)(D)(ii) of such title.</u></p>
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**Rationale:** The Tribal Technical Assistance Program centers provide much-needed technical assistance and training to tribal governments. However, the current number and size of existing TTAPs is not sufficient to serve the need, and the process for selecting TTAPs has at times been unresponsive to the input of tribal leaders and transportation officials. This provision, in conjunction with section 1119(h), increases the accessibility of the TTAPs by requiring the Federal Highway Administration Office of Professional and Corporate Development to establish a TTAP center in each of the BIA's twelve regions and increases the funding for the TTAPs (to \$350,000 each). This section also requires the Secretary of Transportation to establish a joint federal and tribal selection committee for each of the twelve BIA regions to select the TTAP grant recipient for the region, clarifies that federal oversight of the TTAPs shall be solely through the Federal Highway Administration's Office of Corporate and Professional Development and requires the Secretary to solicit the views of tribal leaders and tribal transportation officials each year concerning the adequacy of the services provided by their region's TTAP.

**Section 6001. TRANSPORTATION PLANNING**

(a) IN GENERAL.—Section 134(f)(3)(C)(ii)(II) of such title is amended to read as follows:

“(II) Funding.--For fiscal year 2008 and each fiscal year thereafter, in addition to other funds made available to the metropolitan planning organization for the Lake Tahoe region under this title and chapter 53 of title 49, United States Code prior to any allocation under section 202(a)-(c) of this title and notwithstanding the allocation provisions of section 202(a)-(c), the Secretary shall set aside 1/2 of 1 percent of all funds authorized to be appropriated for such fiscal year to carry out the public lands highways, park roads and parkways and refuge roads programs under section 204 and shall make such funds available to the metropolitan planning organization for the Lake Tahoe region to carry out the transportation planning process, environmental reviews, preliminary engineering, and design to

**Section 134(f)(C)(ii)(II) to read:**

(II) Funding.--For fiscal year 2008 and each fiscal year thereafter, in addition to other funds made available to the metropolitan planning organization for the Lake Tahoe region under this title and chapter 53 of title 49, United States Code prior to any allocation under section 202(a)-(c) of this title and notwithstanding the allocation provisions of section 202(a)-(c), the Secretary shall set aside 1/2 of 1 percent of all funds authorized to be appropriated for such fiscal year to carry out the public lands highways, park roads and parkways and refuge roads programs under section 204 and shall make such funds available to the metropolitan planning organization for the Lake Tahoe region to carry out the transportation planning process, environmental reviews, preliminary engineering, and design to complete environmental documentation for transportation projects for the Lake Tahoe region under the Tahoe Regional Planning Compact as consented to in Public Law 96-551 (94 Stat. 3233)

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complete environmental documentation for transportation projects for the Lake Tahoe region under the Tahoe Regional Planning Compact as consented to in Public Law 96-551 (94 Stat. 3233) and this paragraph.”	and this paragraph.
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**Rationale:** Under the SAFETEA-LU Technical Corrections Act of 2008, Pub. L. 110-244, the Lake Tahoe Metropolitan Planning Organization is funded by a set-aside of funds from the Federal Lands Highways Program, including the Indian Reservation Roads Program. Federal officials have estimated that this set aside will reduce IRR Program funds by approximately \$2,000,000 per year and this dedicated amount will increase as funding for the IRR Program increases. Under the proposed provision, and Section 3005, IRR Program funds would not be included in the Lake Tahoe Metropolitan Planning Organization set-aside.