

117TH CONGRESS
1ST SESSION

S. 358

To amend title 23, United States Code, to modify the distribution of funds under the tribal transportation program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 23, 2021

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

A BILL

To amend title 23, United States Code, to modify the distribution of funds under the tribal transportation program, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Tribal Transportation
5 Equity and Transparency Improvement Act of 2021”.

6 **SEC. 2. TRIBAL TRANSPORTATION PROGRAM.**

7 (a) IN GENERAL.—Section 202 of title 23, United
8 States Code, is amended—

1 (1) in subsection (a)(9)(A), by striking “con-
2 struction and improvement” and inserting “con-
3 struction, improvement, and highway safety”;

4 (2) in subsection (b)—

5 (A) in paragraph (1)—

6 (i) by striking subparagraph (D) and
7 inserting the following:

8 “(D) ADDITIONAL FACILITIES.—

9 “(i) IN GENERAL.—Not later than
10 270 days after the date of enactment of
11 the Tribal Transportation Equity and
12 Transparency Improvement Act of 2021,
13 and not less frequently than every 3 years
14 thereafter, the Secretary of the Interior
15 shall publish in the Federal Register a no-
16 tice requesting proposals from Indian
17 tribes to include additional transportation
18 facilities that are eligible for funding under
19 the tribal transportation program in the
20 inventory described in subparagraph (A), if
21 those proposed additional facilities are in-
22 cluded in the inventory in a uniform and
23 consistent manner nationally.

24 “(ii) RULE OF CONSTRUCTION.—

25 Nothing in this subparagraph—

1 “(I) prohibits the Secretary of
2 the Interior from including in the in-
3 ventory under subparagraph (A) addi-
4 tional transportation facilities more
5 frequently than required under clause
6 (i), including, as necessary, in re-
7 sponse to a proposal from an eligible
8 Indian tribe submitted during a pe-
9 riod not described in the notice under
10 clause (i); or

11 “(II) requires Indian tribes to
12 submit proposals to the Secretary of
13 the Interior in response to the notice
14 required under clause (i).”; and

15 (ii) by adding at the end the fol-
16 lowing:

17 “(F) PUBLIC AVAILABILITY.—The Sec-
18 retary of the Interior shall ensure that all non-
19 confidential information within the inventory
20 described in subparagraph (A) is made avail-
21 able—

22 “(i) in a user-friendly manner on the
23 public website of the Department of the
24 Interior; and

1 “(ii) in a manner capable of being
2 searched and downloaded by users of the
3 public website of the Department of the
4 Interior.”; and

5 (B) in paragraph (3)(B), in the matter
6 preceding clause (i), by striking “fiscal year
7 2012” and inserting “the most recent fiscal
8 year for which data is available”;

9 (3) in subsection (c)—

10 (A) in paragraph (3)—

11 (i) in subparagraph (A), by striking “;
12 and” at the end and inserting a period;

13 (ii) by striking subparagraph (B); and

14 (iii) in the matter preceding subpara-
15 graph (A), by striking “shall be—” and all
16 that follows through “selected by” in sub-
17 paragraph (A), and inserting “shall be se-
18 lected by”; and

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

20 “(4) NATIONALLY SIGNIFICANT FEDERAL
21 LANDS AND TRIBAL PROJECTS PROGRAM.—Notwith-
22 standing any other provision of this section, amounts
23 made available to Indian tribes under subsection
24 (b)(3) may be used for planning and design activi-
25 ties related to applications for grants under the na-

1 tionally significant Federal lands and tribal projects
2 program under section 1123 of the FAST Act (23
3 U.S.C. 201 note; Public Law 114–94).”; and

4 (4) in subsection (e)(2), by striking “as appro-
5 priate,” and inserting “subject to subsection
6 (a)(9),”.

7 (b) INSPECTOR GENERAL REVIEW.—

8 (1) IN GENERAL.—Not later than 180 days
9 after the date of enactment of this Act, the Inspec-
10 tor General of the Department of Transportation
11 and the Inspector General of the Department of the
12 Interior shall jointly begin an audit of the tribal
13 transportation program under section 202 of title
14 23, United States Code (referred to in this section
15 as the “program”).

16 (2) REVIEW.—The audit under paragraph (1)
17 shall include—

18 (A) a review of the data collection and
19 management processes used by the Secretary of
20 the Interior in maintaining the national inven-
21 tory of tribal transportation facilities under sec-
22 tion 202(b)(1) of title 23, United States Code;
23 and

24 (B) a review of the administration of the
25 program, including whether—

1 (i) funding under the program is dis-
2 tributed in a timely manner that is con-
3 sistent with statutory and regulatory re-
4 quirements; and

5 (ii) the current procedures and prac-
6 tices used by the Secretary of the Interior
7 to allocate funding for tribal transportation
8 facilities (as defined in section 101(a) of
9 title 23, United States Code) under the
10 program are transparent and consistently
11 applied.

12 (3) REPORT.—Not later than 1 year after the
13 date of enactment of this Act, the Inspector General
14 of the Department of Transportation and the In-
15 spector General of the Department of the Interior
16 shall jointly submit a report describing the results of
17 the audit under paragraph (1) to—

18 (A) the Committee on Environment and
19 Public Works of the Senate;

20 (B) the Committee on Indian Affairs of the
21 Senate;

22 (C) the Committee on Transportation and
23 Infrastructure of the House of Representatives;
24 and

1 (D) the Committee on Natural Resources
2 of the House of Representatives.

3 (c) COMPTROLLER GENERAL REVIEW.—

4 (1) IN GENERAL.—The Comptroller General of
5 the United States (referred to in this subsection as
6 the “Comptroller General”) shall initiate an audit of
7 the program.

8 (2) REVIEW.—The audit under paragraph (1)
9 shall include an examination of—

10 (A) the funding formula of the program
11 under section 202(b)(3) of title 23, United
12 States Code, including key decisions made over
13 time that have affected the methods used to de-
14 termine tribal shares of program funds;

15 (B) whether, for purposes of allocating
16 funding under section 202 of title 23, United
17 States Code, the allocation methodology under
18 subpart D of part 1000 of title 24, Code of
19 Federal Regulations (as in effect on the date of
20 enactment of this Act), provides an accurate
21 and reliable estimate of tribal population;

22 (C) potential alternatives to the method-
23 ology described in subparagraph (B) for pur-
24 poses of allocating funding under section 202 of
25 title 23, United States Code;

1 (D) how the Secretary of the Interior en-
2 sures that—

3 (i) the program is consistently admin-
4 istered; and

5 (ii) program decisions are trans-
6 parently and consistently made; and

7 (E) the potential effects of having the pro-
8 gram administered solely by the Secretary of
9 the Interior or the Secretary of Transportation.

10 (3) REPORT.—Not later than 540 days after
11 the date of enactment of this Act, the Comptroller
12 General shall submit a report describing the results
13 of the audit under paragraph (1) to—

14 (A) the Committee on Environment and
15 Public Works of the Senate;

16 (B) the Committee on Indian Affairs of the
17 Senate;

18 (C) the Committee on Transportation and
19 Infrastructure of the House of Representatives;
20 and

21 (D) the Committee on Natural Resources
22 of the House of Representatives.

23 (d) OBLIGATION LIMITATIONS.—Notwithstanding
24 section 1102(a) of the FAST Act (23 U.S.C. 104 note;
25 Public Law 114–94) or any other provision of law pro-

1 viding a limitation on obligations for Federal-aid highway
2 and highway safety construction programs for a fiscal
3 year, amounts made available to carry out the tribal trans-
4 portation program under section 202 of title 23, United
5 States Code, for a fiscal year shall not be subject to the
6 obligation limitation for that fiscal year.

7 **SEC. 3. TRANSPORTATION FACILITY ELIGIBILITY.**

8 (a) DEFINITIONS.—In this section:

9 (1) INVENTORY.—The term “inventory” means
10 the national inventory of tribal transportation facili-
11 ties under section 202(b) of title 23, United States
12 Code.

13 (2) PROPOSED ROAD.—The term “proposed
14 road” means a proposed road or facility (as defined
15 in section 170.5 of title 25, Code of Federal Regula-
16 tions (as in effect on the date of enactment of this
17 Act)) that is a road, including a primary access
18 route (as defined in that section).

19 (3) SECRETARY.—The term “Secretary” means
20 the Secretary of the Interior.

21 (b) DEADLINE.—Not later than 180 days after the
22 date of enactment of this Act, and not less frequently than
23 every 3 years thereafter, the Secretary and the Secretary
24 of Transportation shall require each Indian tribe that in-
25 tends to include a proposed road in the inventory to com-

1 plete and submit for approval the documentation and
2 other information required under section 170.443(a) of
3 title 25, Code of Federal Regulations (as in effect on No-
4 vember 6, 2019), for the proposed road.

5 (c) REPORT.—

6 (1) IN GENERAL.—Not later than 180 days
7 after each deadline described in subsection (b), the
8 Secretary shall submit to the Committee on Indian
9 Affairs of the Senate and the Committee on Natural
10 Resources of the House of Representatives a report
11 describing the proposed roads approved to be in-
12 cluded in the inventory.

13 (2) REQUIREMENTS.—Each report under para-
14 graph (1) shall include, for each Indian reservation,
15 Alaska Native village, or other recognized Indian
16 community (including former Indian reservations in
17 the State of Oklahoma)—

18 (A) the mileage of proposed roads included
19 in the inventory before the deadline described in
20 subsection (b);

21 (B) the mileage of proposed roads ap-
22 proved to be included in the inventory on the
23 basis of the documentation and other informa-
24 tion submitted under subsection (b); and

1 (C) an estimate, based on the documenta-
2 tion and other information submitted under
3 subsection (b), of the construction and mainte-
4 nance costs of the proposed roads described in
5 subparagraph (B).

6 **SEC. 4. TRIBAL HIGHWAY SAFETY PARTNERSHIPS.**

7 Section 402 of title 23, United States Code, is
8 amended—

9 (1) in subsection (b)(1)(C), by striking “by”
10 and inserting “by, or on behalf of,”; and

11 (2) in subsection (h)(2)—

12 (A) by striking “Notwithstanding” and in-
13 serting the following:

14 “(A) IN GENERAL.—Notwithstanding”;
15 and

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

17 “(B) COOPERATION.—In accordance with
18 section 202(a)(9)(A), an Indian tribe may use
19 amounts described in subparagraph (A) in co-
20 operation with States, counties, and other local
21 subdivisions for highway safety purposes.”.

22 **SEC. 5. NATIONALLY SIGNIFICANT FEDERAL LANDS AND**
23 **TRIBAL PROJECTS PROGRAM.**

24 Section 1123 of the FAST Act (23 U.S.C. 201 note;
25 Public Law 114–94) is amended—

1 (1) in subsection (c)(3), by inserting “for a
2 project that is to be carried out by an eligible entity
3 that is not an Indian tribe,” before “having an”;
4 and

5 (2) in subsection (g)(1)—

6 (A) by striking “shall be up to” and insert-
7 ing the following: “shall be—

8 “(A) for a project carried out by an Indian
9 tribe, up to 100 percent; and

10 “(B) for a project not described in sub-
11 paragraph (A), up to”.

12 **SEC. 6. TRIBAL TRANSPORTATION ADVISORY COMMITTEE.**

13 (a) ESTABLISHMENT.—Subject to the availability of
14 appropriations, not later than 180 days after the date of
15 enactment of this Act, the Secretary of the Interior (re-
16 ferred to in this section as the “Secretary”) shall establish
17 within the Bureau of Indian Affairs a committee, to be
18 known as the “Tribal Transportation Advisory Com-
19 mittee” (referred to in this section as the “Committee”),
20 which shall replace the Tribal Transportation Program
21 Coordinating Committee established under sections
22 170.135 through 170.137 of title 25, Code of Federal
23 Regulations (as in effect on the date of enactment of this
24 Act).

25 (b) MEMBERSHIP.—

1 (1) IN GENERAL.—The Committee shall be
2 composed of—

3 (A) the Secretary (or a designee);

4 (B) representatives of a diverse group of
5 Indian tribes, including—

6 (i) not fewer than 1 tribal representa-
7 tive from each region of the Bureau of In-
8 dian Affairs; and

9 (ii) not more than 3 tribal representa-
10 tives from any 1 region of the Bureau of
11 Indian Affairs;

12 (C) State and local representatives;

13 (D) not fewer than 1 representative of the
14 Bureau of Indian Affairs;

15 (E) not fewer than 1 representative of the
16 Department of Transportation; and

17 (F) other members, as determined to be
18 appropriate by the Secretary in consultation
19 with the Committee.

20 (2) APPOINTMENT.—The Secretary shall ap-
21 point each member of the Committee.

22 (3) CHAIRPERSON.—The Secretary (or a des-
23 igned) shall serve as chairperson of the Committee.

24 (c) TERMS.—Except for the Secretary, each member
25 of the Committee shall serve for a term of 3 years.

1 (d) VACANCIES.—Any vacancy occurring in the mem-
2 bership of the Committee—

3 (1) shall be filled in the same manner as the
4 original appointment was made; and

5 (2) shall not affect the power of the remaining
6 members to carry out the duties of the Committee.

7 (e) DUTIES.—

8 (1) IN GENERAL.—The Committee shall—

9 (A) regularly provide advice to the Sec-
10 retary on and, subject to the discretion of the
11 Committee, study issues relating to tribal trans-
12 portation, including—

13 (i) the tribal transportation program
14 under section 202 of title 23, United
15 States Code, including—

16 (I) the funding formula used to
17 determine tribal shares under the trib-
18 al transportation program; and

19 (II) the national tribal transpor-
20 tation facility inventory established
21 under subsection (b)(1) of that sec-
22 tion;

23 (ii) the road maintenance program
24 managed by the Bureau of Indian Affairs;

1 (iii) grants awarded to Indian tribes
2 for public transportation using amounts
3 made available under section 5311(e)(1) of
4 title 49, United States Code;

5 (iv) transportation safety within tribal
6 reservations, including—

7 (I) traffic safety; and

8 (II) safety partnerships with
9 Federal, State, and local authorities;

10 (v) the availability of transportation
11 funding in the event of a natural disaster;
12 and

13 (vi) any other policies or procedures
14 related to tribal transportation, as deter-
15 mined by the Committee; and

16 (B) carry out the duties of the Tribal
17 Transportation Program Coordinating Com-
18 mittee established under sections 170.135
19 through 170.137 of title 25, Code of Federal
20 Regulations (as in effect on the date of enact-
21 ment of this Act).

22 (2) BEST PRACTICES AND RECOMMENDA-
23 TIONS.—The Committee may, on a periodic basis,
24 develop and present to the Secretary best practices

1 and recommendations regarding the issues described
2 in clauses (i) through (vi) of paragraph (1)(A).

3 (3) SUBCOMMITTEES.—The Committee may es-
4 tablish any subcommittees necessary to carry out the
5 duties of the Committee.

6 (f) REPORT TO CONGRESS.—Not later than 180 days
7 after receiving any recommendations from the Committee
8 under subsection (e)(2), the Secretary shall submit to the
9 relevant committees of Congress a report describing those
10 recommendations.

11 (g) FEDERAL ADVISORY COMMITTEE ACT.—Except
12 as otherwise provided in this section, the Federal Advisory
13 Committee Act (5 U.S.C. App.) shall apply to the Com-
14 mittee and each subcommittee of the Committee.

15 (h) DETAIL OF FEDERAL EMPLOYEES.—

16 (1) IN GENERAL.—On request of the Com-
17 mittee, the Secretary may detail, with or without re-
18 imbursement, any of the personnel of the Depart-
19 ment of the Interior or, in consultation with the Sec-
20 retary of Transportation, the Department of Trans-
21 portation, to the Committee to assist the Committee
22 in carrying out the duties of the Committee.

23 (2) CIVIL SERVICE STATUS.—Any detail of a
24 Federal employee under paragraph (1) shall not in-

1 interrupt or otherwise affect the civil service status or
2 privileges of the Federal employee being detailed.

3 (i) PAYMENT AND EXPENSES.—

4 (1) COMPENSATION.—Members of the Com-
5 mittee shall serve without pay.

6 (2) TRAVEL EXPENSES.—Each member of the
7 Committee shall receive, for a meeting called by the
8 Secretary, travel expenses, including per diem in lieu
9 of subsistence, in accordance with sections 5702 and
10 5703 of title 5, United States Code.

11 (j) TERMINATION.—The Committee, including sub-
12 committees of the Committee, shall terminate on the date
13 that is 10 years after the date of enactment of this Act.

○