

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.

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## 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

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## 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) in subsection (a)(9)(A), by striking “construction and improvement” and inserting “construction, improvement, and highway safety”;

(2) in subsection (b)—

(A) in paragraph (1)—

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

“(D) ADDITIONAL FACILITIES.—

“(i) IN GENERAL.—Not later than 270 days after the date of enactment of the Tribal Transportation Equity and Transparency Improvement Act of 2021, and not less frequently than every 3 years thereafter, the Secretary of the Interior shall publish in the Federal Register a notice requesting proposals from Indian tribes to include additional transportation facilities that are eligible for funding under the tribal transportation program in the inventory described in subparagraph (A), if those proposed additional facilities are included in the inventory in a uniform and consistent manner nationally.

“(ii) RULE OF CONSTRUCTION.—

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-

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

(4) in subsection (e)(2), by striking “as appropriate,” and inserting “subject to subsection (a)(9),”.

(b) INSPECTOR GENERAL REVIEW.—

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

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

(A) a review of the data collection and management processes used by the Secretary of the Interior in maintaining the national inventory of tribal transportation facilities under section 202(b)(1) of title 23, United States Code; and

(B) a review of the administration of the 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 ignee) 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(c)(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.

○