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

IN THE HOUSE OF REPRESENTATIVES

Mr. DeFazio (for himself and Mr. Young of Alaska) introduced the following bill; which was referred to the Committee on

A BILL

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

1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE.

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

(Original Signature of Member)
SEC. 2. TRIBAL TRANSPORTATION SELF-GOVERNANCE PROGRAM.

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

“§ 207. Tribal transportation self-governance program

“(a) ESTABLISHMENT.—Subject to the requirements of this section, the Secretary shall establish and carry out a program to be known as the tribal transportation self-governance program. The Secretary may delegate responsibilities for administration of the program as the Secretary determines appropriate.

“(b) ELIGIBILITY.—

“(1) IN GENERAL.—An Indian tribe shall be eligible to participate in the program if the Indian tribe—

“(A) requests participation in the program by resolution or other official action by the governing body of the Indian tribe; and

“(B) demonstrates, for the preceding 3 fiscal years, financial stability and financial management capability.

“(2) CRITERIA FOR DETERMINING FINANCIAL STABILITY AND FINANCIAL MANAGEMENT CAPACITY.—For the purposes of paragraph (1)(B), evi-
dence that, during the preceding 3 fiscal years, an Indian tribe had no uncorrected significant and material audit exceptions in the required annual audit of the Indian tribe’s self-determination contracts or self-governance funding agreements with any Federal agency shall be conclusive evidence of the required stability and capability.

“(c) COMPACTS.—

“(1) COMPACT REQUIRED.—Upon the request of an eligible Indian tribe, and subject to the requirements of this section, the Secretary shall negotiate and enter into a written compact with the Indian tribe for the purpose of providing for the participation of the Indian tribe in the program.

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

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

“(d) ANNUAL FUNDING AGREEMENTS.—
“(1) Funding agreement required.—After entering into a compact with an Indian tribe under subsection (c), the Secretary shall negotiate and enter into a written annual funding agreement with the Indian tribe.

“(2) Contents.—

“(A) In general.—

“(i) Discretionary and competitive grants.—A funding agreement entered into with an Indian tribe shall authorize the Indian tribe, as determined by the Indian tribe, to plan, conduct, consolidate, administer, and receive full tribal share funding and funding to tribes from discretion ary and competitive grants administered by the Department for all programs, services, functions, and activities (or portions thereof) that are made available to Indian tribes to carry out tribal transportation programs and programs, services, functions, and activities (or portions thereof) administered by the Secretary that are otherwise available to Indian tribes.

“(ii) Transfers of state funds.—
“(I) INCLUSION OF TRANSFERRED FUNDS IN FUNDING AGREEMENT.—A funding agreement entered into with an Indian tribe shall include Federal-aid funds apportioned to a State under chapter 1 if the State elects to provide a portion of such funds to the Indian tribe for a project eligible under section 202(a).

“(II) METHOD FOR TRANSFERS.—If a State elects to provide funds described in subclause (I) to an Indian tribe, the State shall transfer the funds back to the Secretary and the Secretary shall transfer the funds to the Indian tribe in accordance with this section.

“(III) RESPONSIBILITY FOR TRANSFERRED FUNDS.—Notwithstanding any other provision of law, if a State provides funds described in subclause (I) to an Indian tribe—

“(aa) the State shall not be responsible for constructing or maintaining a project carried out...
using the funds or for administering or supervising the project or funds during the applicable statute of limitations period related to the construction of the project; and

“(bb) the Indian tribe shall be responsible for constructing and maintaining a project carried out using the funds and for administering and supervising the project and funds in accordance with this section during the applicable statute of limitations period related to the construction of the project.

“(B) ADMINISTRATION OF TRIBAL SHARES.—The tribal shares referred to in subparagraph (A) shall be provided without regard to the agency or office of the Department within which the program, service, function, or activity (or portion thereof) is performed.

“(C) FLEXIBLE AND INNOVATIVE FINANCING.—
“(i) IN GENERAL.—A funding agreement entered into with an Indian tribe under paragraph (1) shall include provisions pertaining to flexible and innovative financing if agreed upon by the parties.

“(ii) TERMS AND CONDITIONS.—

“(I) AUTHORITY TO ISSUE REGULATIONS.—The Secretary may issue regulations to establish the terms and conditions relating to the flexible and innovative financing provisions referred to in clause (i).

“(II) TERMS AND CONDITIONS IN ABSENCE OF REGULATIONS.—If the Secretary does not issue regulations under subclause (I), the terms and conditions relating to the flexible and innovative financing provisions referred to in clause (i) shall be consistent with—

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

“(AA) section 202(d)(5), as in effect before the date of enactment
of MAP–21 (Public Law 112–141); and

“(BB) section 202(b)(7); or

“(bb) regulations of the Department of the Interior relating to flexible financing contained in part 170 of title 25, Code of Federal Regulations, as in effect on the date of enactment of the Tribal Transportation Self-Governance Act of 2015.

“(3) DISCRETIONARY AND COMPETITIVE GRANTS.—Notwithstanding any other provision of law, an Indian tribe shall be eligible to directly apply for and receive the discretionary and competitive grants made available under transportation programs that States or political subdivisions of States are eligible to apply for and receive.

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

“(A) terms that generally identify the programs, services, functions, and activities (or portions thereof) to be performed or administered by the Indian tribe; and
“(B) for items identified in subparagraph (A)—

“(i) the general budget category assigned;

“(ii) the funds to be provided, including those funds to be provided on a recurring basis;

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

“(iv) the responsibilities of the Secretary and the Indian tribe; and

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

“(5) Subsequent funding agreements.—

“(A) Applicability of existing agreement.—Absent notification from an Indian tribe that the Indian tribe is withdrawing from or retroceding the operation of one or more programs, services, functions, or activities (or portions thereof) identified in a funding agreement, or unless otherwise agreed to by the parties, each funding agreement shall remain in full force and effect until a subsequent funding agreement is executed.
“(B) Effective date of subsequent agreement.—The terms of the subsequent funding agreement shall be retroactive to the end of the term of the preceding funding agreement.

“(6) Consent of Indian tribe required.—The Secretary shall not revise, amend, or require additional terms in a new or subsequent funding agreement without the consent of the Indian tribe that is subject to the agreement unless such terms are required by Federal law.

“(e) General provisions.—

“(1) Redesign and consolidation.—

“(A) In general.—An Indian tribe, in any manner that the Indian tribe considers to be in the best interest of the Indian community being served, may—

“(i) redesign or consolidate programs, services, functions, and activities (or portions thereof) included in a funding agreement; and

“(ii) reallocate or redirect funds for such programs, services, functions, and activities (or portions thereof), if the funds are—
“(I) expended on projects identified in a transportation improvement program approved by the Secretary; and

“(II) used in accordance with appropriations Acts and other applicable statutory limitations.

“(B) EXCEPTION.—Notwithstanding subparagraph (A), if, pursuant to subsection (d), an Indian tribe receives a discretionary or competitive grant from the Secretary or receives State apportioned funds, the Indian tribe shall use the funds for the purpose for which the funds were originally authorized.

“(2) RETROCESSION.—

“(A) IN GENERAL.—

“(i) AUTHORITY OF INDIAN TRIBES.—An Indian tribe may retrocede (fully or partially) to the Secretary programs, services, functions, or activities (or portions thereof) included in a compact or funding agreement.

“(ii) REASSUMPTION OF REMAINING FUNDS.—Following a retrocession described in clause (i), the Secretary may—
“(I) reassume the remaining funding associated with the retroceded programs, functions, services, and activities (or portions thereof) included in the applicable compact or funding agreement;

“(II) out of such remaining funds, transfer funds associated with Department of Interior programs, services, functions, or activities (or portions thereof) to the Secretary of the Interior to carry out transportation services provided by the Secretary of the Interior; and

“(III) distribute funds not transferred under subclause (II) in accordance with applicable law.

“(iii) Correction of Programs.—If the Secretary makes a finding under subsection (f)(2)(B) and no funds are available under subsection (f)(2)(A)(ii), the Secretary shall not be required to provide additional funds to complete or correct any programs, functions, services, or activities (or portions thereof).
“(B) EFFECTIVE DATE.—Unless the Indian tribe rescinds a request for retrocession, the retrocession shall become effective within the timeframe specified by the parties in the compact or funding agreement. In the absence of such a specification, the retrocession shall become effective on—

“(i) the earlier of—

“(I) 1 year after the date of submission of the request; or

“(II) the date on which the funding agreement expires; or

“(ii) such date as may be mutually agreed upon by the parties and, with respect to Department of the Interior programs, functions, services, and activities (or portions thereof), the Secretary of the Interior.

“(f) PROVISIONS RELATING TO THE SECRETARY.—

“(1) DECISIONMAKER.—A decision that constitutes a final agency action and relates to an appeal of the rejection of a final offer by the Department shall be made either—

“(A) by an official of the Department who holds a position at a higher organizational level
within the Department than the level of the departmental agency in which the decision that is the subject of the appeal was made; or

“(B) by an administrative judge.

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

“(A) Authority to terminate.—

“(i) Provision to be included in compact or funding agreement.—A compact or funding agreement shall include a provision authorizing the Secretary, if the Secretary makes a finding described in subparagraph (B), to—

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

“(II) reassume the remaining funding associated with the reassumed programs, functions, services, and activities included in the compact or funding agreement.

“(ii) Transfers of funds.—Out of any funds reassumed under clause (i)(II), the Secretary may transfer the funds associated with Department of the Interior
programs, functions, services, and activities (or portions thereof) to the Secretary of the Interior to provide continued transportation services in accordance with applicable law.

“(B) FINDINGS RESULTING IN TERMINATION.—The finding referred to in subparagraph (A) is a specific finding of—

“(i) imminent jeopardy to a trust asset, natural resources, or public health and safety that is caused by an act or omission of the Indian tribe and that arises out of a failure to carry out the compact or funding agreement, as determined by the Secretary; or

“(ii) gross mismanagement with respect to funds or programs transferred to the Indian tribe under the compact or funding agreement, as determined by the Secretary in consultation with the Inspector General of the Department, as appropriate.

“(C) PROHIBITION.—The Secretary shall not terminate a compact or funding agreement (or portion thereof) unless—
“(i) the Secretary has first provided written notice and a hearing on the record to the Indian tribe that is subject to the compact or funding agreement; and

“(ii) the Indian tribe has not taken corrective action to remedy the mismanagement of funds or programs or the imminent jeopardy to a trust asset, natural resource, or public health and safety.

“(D) EXCEPTION.—

“(i) IN GENERAL.—Notwithstanding subparagraph (C), the Secretary, upon written notification to an Indian tribe that is subject to a compact or funding agreement, may immediately terminate the compact or funding agreement (or portion thereof) if—

“(I) the Secretary makes a finding of imminent substantial and irreparable jeopardy to a trust asset, natural resource, or public health and safety; and

“(II) the jeopardy arises out of a failure to carry out the compact or funding agreement.
“(ii) Hearings.—If the Secretary terminates a compact or funding agreement (or portion thereof) under clause (i), the Secretary shall provide the Indian tribe subject to the compact or agreement with a hearing on the record not later than 10 days after the date of such termination.

“(E) Burden of Proof.—In any hearing or appeal involving a decision to terminate a compact or funding agreement (or portion thereof) under this paragraph, the Secretary shall have the burden of proof in demonstrating by clear and convincing evidence the validity of the grounds for the termination.

“(g) Cost Principles.—In administering funds received under this section, an Indian tribe shall apply cost principles under the applicable Office of Management and Budget circular, except as modified by section 450j–1 of title 25, other provisions of law, or by any exemptions to applicable Office of Management and Budget circulars subsequently granted by the Office of Management and Budget. No other audit or accounting standards shall be required by the Secretary. Any claim by the Federal Government against the Indian tribe relating to funds received under a funding agreement based on any audit conducted
pursuant to this subsection shall be subject to the provi-
sions of section 450j–1(f) of title 25.

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

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

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

“(i) CONSTRUCTION PROGRAMS.—

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

“(j) Facilitation.—

“(1) Secretarial Interpretation.—Except as otherwise provided by law, the Secretary shall interpret all Federal laws, Executive orders, and regulations in a manner that will facilitate—

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

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

“(2) Regulation Waiver.—

“(A) In General.—An Indian tribe may submit to the Secretary a written request to waive application of a regulation promulgated under this section with respect to a compact or funding agreement. The request shall identify the regulation sought to be waived and the basis for the request.

“(B) Approvals and Denials.—

“(i) In General.—Not later than 90 days after the date of receipt of a written
request under subparagraph (A), the Secretary shall approve or deny the request in writing.

“(ii) DENIALS.—The Secretary may deny a request under clause (i) only if the Secretary finds that the identified language in the regulation may not be waived because the waiver is prohibited by Federal law.

“(iii) DEEMED APPROVAL.—If the Secretary does not approve or deny a request submitted under subparagraph (A) on or before the last day of the 90-day period referred to in clause (i), the request shall be deemed approved.

“(iv) FINALITY OF DECISIONS.—A decision by the Secretary under this subparagraph shall be final for the Department.

“(k) DISCLAIMERS.—

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

“(A) maintain current Federal Highway Administration Indian reservation roads program and funding agreements; or
“(B) enter into new agreements under the
authority of section 202(b)(7).

“(2) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section may be construed to
impair or diminish the authority of the Secretary
under section 202(b)(7).

“(1) APPLICABILITY OF INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT.—Except to the
extent in conflict with this section (as determined by the
Secretary), the following provisions of the Indian Self-Determination and Education Assistance Act shall apply to
compact and funding agreements (except that any ref-
erence to the Secretary of the Interior or the Secretary
of Health and Human Services in such provisions shall
treated as a reference to the Secretary of Transportation):

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

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

“(3) Subsections (a), (b), (d), (e), (g), (h), (i),
and (k) of section 508 of such Act (25 U.S.C.
458aaa–7), relating to transfer of funds.
“(4) Section 510 of such Act (25 U.S.C. 458aaa–9), relating to Federal procurement laws and regulations.

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

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

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

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

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

“(m) DEFINITIONS.—

“(1) IN GENERAL.—In this section, the following definitions apply (except as otherwise expressly provided):
“(A) COMPACT.—The term ‘compact’ means a compact between the Secretary and an Indian tribe entered into under subsection (c).

“(B) DEPARTMENT.—The term ‘Department’ means the Department of Transportation.

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

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

“(E) INDIAN TRIBE.—The term ‘Indian tribe’ means any Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe under the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a). In any case in which an Indian tribe has authorized another Indian tribe, an inter-tribal consortium, or a tribal organization to plan for or carry out programs, services, functions, or activities (or portions thereof) on
its behalf under this part, the authorized Indian
tribe, inter-tribal consortium, or tribal organiza-
tion shall have the rights and responsibilities of
the authorizing Indian tribe (except as other-
wise provided in the authorizing resolution or in
this title). In such event, the term ‘Indian tribe’
as used in this part shall include such other au-
thorized Indian tribe, inter-tribal consortium, or
tribal organization.

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

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

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

“(2) APPLICABILITY OF OTHER DEFINITIONS.—
In this section, the definitions set forth in sections
4 and 505 of the Indian Self-Determination and
Education Assistance Act (25 U.S.C. 450b; 458aaa)
apply, except as otherwise expressly provided in this
section.

“(n) REGULATIONS.—
“(1) IN GENERAL.—

“(A) PROMULGATION.—Not later than 90 days after the date of enactment of the Tribal Transportation Self-Governance Act of 2015, 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 section.

“(B) PUBLICATION OF PROPOSED REGULATIONS.—Proposed regulations to implement this section shall be published in the Federal Register by the Secretary not later than 21 months after such date of enactment.

“(C) EXPIRATION OF AUTHORITY.—The authority to promulgate regulations under paragraph (1) shall expire 30 months after such date of enactment.

“(D) EXTENSION OF DEADLINES.—A deadline set forth in paragraph (1)(B) or (1)(C) may be extended up to 180 days if the negotiated rulemaking committee referred to in paragraph (2) concludes that the committee cannot meet the deadline and the Secretary so notifies the appropriate committees of Congress.
“(2) COMMITTEE.—

“(A) IN GENERAL.—A negotiated rulemaking committee established pursuant to section 565 of title 5 to carry out this subsection shall have as its members only Federal and tribal government representatives, a majority of whom shall be nominated by and be representatives of Indian tribes with funding agreements under this title.

“(B) REQUIREMENTS.—The committee shall confer with, and accommodate participation by, representatives of Indian tribes, intertribal consortia, tribal organizations, and individual tribal members.

“(C) ADAPTATION OF PROCEDURES.—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 Indian tribes.

“(3) EFFECT.—The lack of promulgated regulations shall not limit the effect of this section.

“(4) EFFECT OF CIRCULARS, POLICIES, MANUALS, GUIDANCE, AND RULES.—Unless expressly agreed to by the participating Indian tribe in the
compact or funding agreement, the participating Indian tribe shall not be subject to any agency circular, policy, manual, guidance, or rule adopted by the Department of Transportation, except regulations promulgated under this section.”.

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

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