

115TH CONGRESS  
1ST SESSION

# S. 302

To enhance tribal road safety, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 3, 2017

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

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## A BILL

To enhance tribal road safety, 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 “John P. Smith Act”.

5 **SEC. 2. DEFINITION OF SECRETARY.**

6 In this Act, the term “Secretary” means the Sec-  
7 retary of the Interior.

8 **SEC. 3. APPLICATION OF CATEGORICAL EXCLUSIONS TO**  
9 **CERTAIN TRIBAL TRANSPORTATION FACILI-**  
10 **TIES.**

11 (a) DEFINITION OF TRIBAL TRANSPORTATION SAFE-  
12 TY PROJECT.—

1           (1) IN GENERAL.—In this section, the term  
2           “tribal transportation safety project” means a  
3           project described in paragraph (2) that is eligible for  
4           funding under section 202 of title 23, United States  
5           Code, and that—

6                   (A) corrects or improves a hazardous road  
7                   location or feature; or

8                   (B) addresses a highway safety problem.

9           (2) PROJECTS DESCRIBED.—A project de-  
10          scribed in this paragraph is a project for one or  
11          more of the following:

12                   (A) An intersection safety improvement.

13                   (B) Pavement and shoulder widening (in-  
14                   cluding the addition of a passing lane to remedy  
15                   an unsafe condition).

16                   (C) Installation of rumble strips or another  
17                   warning device, if the rumble strips or other  
18                   warning devices do not adversely affect the  
19                   safety or mobility of bicyclists and pedestrians,  
20                   including persons with disabilities.

21                   (D) Installation of a skid-resistant surface  
22                   at an intersection or other location with a high  
23                   frequency of crashes.

1           (E) An improvement for pedestrian or bi-  
2 cyclist safety or the safety of persons with dis-  
3 abilities.

4           (F) Construction and improvement of a  
5 railway-highway grade crossing safety feature,  
6 including the installation of protective devices.

7           (G) The conduct of a model traffic enforce-  
8 ment activity at a railway-highway crossing.

9           (H) Construction of a traffic calming fea-  
10 ture.

11          (I) Elimination of a roadside hazard.

12          (J) Installation, replacement, and other  
13 improvements of highway signage and pavement  
14 markings or a project to maintain minimum  
15 levels of retroreflectivity that addresses a high-  
16 way safety problem consistent with a State  
17 strategic highway safety plan.

18          (K) Installation of a priority control sys-  
19 tem for emergency vehicles at signalized inter-  
20 sections.

21          (L) Installation of a traffic control or other  
22 warning device at a location with high crash po-  
23 tential.

24          (M) Transportation safety planning.

1           (N) Collection, analysis, and improvement  
2 of safety data.

3           (O) Planning integrated interoperable  
4 emergency communications equipment, oper-  
5 ational activities, or traffic enforcement activi-  
6 ties (including police assistance) relating to  
7 work zone safety.

8           (P) Installation of guardrails, barriers (in-  
9 cluding barriers between construction work  
10 zones and traffic lanes for the safety of road  
11 users and workers), and crash attenuators.

12          (Q) The addition or retrofitting of struc-  
13 tures or other measures to eliminate or reduce  
14 crashes involving vehicles and wildlife.

15          (R) Installation of yellow-green signs and  
16 signals at pedestrian and bicycle crossings and  
17 in school zones.

18          (S) Construction and operational improve-  
19 ments on a high risk rural road (as defined in  
20 section 148(a) of title 23, United States Code).

21          (T) Geometric improvements to a road for  
22 the purposes of safety improvement.

23          (U) A road safety audit.

24          (V) Roadway safety infrastructure im-  
25 provements consistent with the recommenda-

1 tions included in the publication of the Federal  
2 Highway Administration entitled “Handbook  
3 for Designing Roadways for the Aging Popu-  
4 lation” (FHWA–SA–14–015), dated June 2014  
5 (or a revised or updated publication).

6 (W) Truck parking facilities eligible for  
7 funding under section 1401 of MAP–21 (23  
8 U.S.C. 137 note; Public Law 112–141).

9 (X) Systemic safety improvements.

10 (Y) Installation of vehicle-to-infrastructure  
11 communication equipment.

12 (Z) Pedestrian hybrid beacons.

13 (AA) Roadway improvements that provide  
14 separation between pedestrians and motor vehi-  
15 cles, including medians and pedestrian crossing  
16 islands.

17 (BB) A physical infrastructure safety  
18 project not described in subparagraphs (A)  
19 through (AA).

20 (b) NEW CATEGORICAL EXCLUSIONS.—

21 (1) REVIEW OF EXISTING CATEGORICAL EXCLU-  
22 SIONS.—The Secretary shall review the categorical  
23 exclusions under section 771.117 of title 23, Code of  
24 Federal Regulations (or successor regulations), to  
25 determine which, if any, are applicable for use by

1 the Secretary in review of projects eligible for assist-  
2 ance under section 202 of title 23, United States  
3 Code.

4 (2) REVIEW OF TRIBAL TRANSPORTATION  
5 SAFETY PROJECTS.—The Secretary shall identify  
6 tribal transportation safety projects that meet the  
7 requirements for categorical exclusions under sec-  
8 tions 1507.3 and 1508.4 of title 40, Code of Federal  
9 Regulations.

10 (3) PROPOSAL.—The Secretary shall issue a  
11 proposed rule, in accordance with sections 1507.3  
12 and 1508.4 of title 40, Code of Federal Regulations,  
13 to propose any categorical exclusions identified  
14 under paragraphs (1) and (2).

15 (4) DEADLINE.—Not later than 180 days after  
16 the date of enactment of this Act, and after consid-  
17 ering any comments on the proposed rule issued  
18 under paragraph (3), the Secretary shall promulgate  
19 a final rule for the categorical exclusions, in accord-  
20 ance with sections 1507.3 and 1508.4 of title 40,  
21 Code of Federal Regulations.

22 (5) TECHNICAL ASSISTANCE.—The Secretary of  
23 Transportation shall provide technical assistance to  
24 the Secretary in carrying out this subsection.

1 (c) REVIEWS OF TRIBAL TRANSPORTATION SAFETY  
2 PROJECTS.—

3 (1) IN GENERAL.—The Secretary or the head of  
4 another Federal agency responsible for a decision re-  
5 lated to a tribal transportation safety project shall  
6 complete any approval or decision for the review of  
7 the tribal transportation safety project required  
8 under the National Environmental Policy Act of  
9 1969 (42 U.S.C. 4321 et seq.) or any other applica-  
10 ble Federal law on an expeditious basis using the  
11 shortest existing applicable process.

12 (2) REVIEW OF APPLICATIONS.—Not later than  
13 45 days after the date of receipt of a complete appli-  
14 cation by an Indian tribe for approval of a tribal  
15 transportation safety project, the Secretary shall—

16 (A) take final action on the application; or

17 (B) provide the Indian tribe a schedule for  
18 completion of the review described in paragraph  
19 (1), including the identification of any other  
20 Federal agency that has jurisdiction with re-  
21 spect to the project.

22 (3) DECISIONS UNDER OTHER FEDERAL  
23 LAWS.—In any case in which a decision under any  
24 other Federal law relating to a tribal transportation  
25 safety project (including the issuance or denial of a

1 permit or license) is required, not later than 45 days  
2 after the Secretary has made all decisions of the  
3 lead agency under the National Environmental Pol-  
4 icy Act of 1969 (42 U.S.C. 4321 et seq.) with re-  
5 spect to the project, the head of the Federal agency  
6 responsible for the decision shall—

7 (A) make the applicable decision; or

8 (B) provide the Indian tribe a schedule for  
9 making the decision.

10 (4) EXTENSIONS.—The Secretary or the head  
11 of an applicable Federal agency may extend the pe-  
12 riod under paragraph (2) or (3), as applicable, by an  
13 additional 30 days by providing the Indian tribe no-  
14 tice of the extension, including a statement of the  
15 need for the extension.

16 (5) NOTIFICATION AND EXPLANATION.—In any  
17 case in which a required action is not completed by  
18 the deadline under paragraph (2), (3), or (4), as ap-  
19 plicable, the Secretary or the head of a Federal  
20 agency, as applicable, shall—

21 (A) notify the Committee on Indian Affairs  
22 of the Senate and the Committee on Natural  
23 Resources of the House of Representatives of  
24 the failure to comply with the deadline; and



1 (B) provide to the Committees described in  
2 subparagraph (A) a detailed explanation of the  
3 reasons for the failure to comply with the dead-  
4 line.

5 **SEC. 4. PROGRAMMATIC AGREEMENTS FOR CATEGORICAL**  
6 **EXCLUSIONS.**

7 (a) IN GENERAL.—The Secretary shall enter into  
8 programmatic agreements with Indian tribes that estab-  
9 lish efficient administrative procedures for carrying out  
10 environmental reviews for projects eligible for assistance  
11 under section 202 of title 23, United States Code.

12 (b) INCLUSIONS.—A programmatic agreement under  
13 subsection (a)—

14 (1) may include an agreement that allows an  
15 Indian tribe to determine, on behalf of the Sec-  
16 retary, whether a project is categorically excluded  
17 from the preparation of an environmental assess-  
18 ment or environmental impact statement under the  
19 National Environmental Policy Act of 1969 (42  
20 U.S.C. 4321 et seq.); and

21 (2) shall—

22 (A) require that the Indian tribe maintain  
23 adequate capacity in terms of personnel and  
24 other resources to carry out applicable agency  
25 responsibilities pursuant to section 1507.2 of

1 title 40, Code of Federal Regulations (or suc-  
2 cessor regulations);

3 (B) set forth the responsibilities of the In-  
4 dian tribe for making categorical exclusion de-  
5 terminations, documenting the determinations,  
6 and achieving acceptable quality control and  
7 quality assurance;

8 (C) allow—

9 (i) the Secretary to monitor compli-  
10 ance of the Indian tribe with the terms of  
11 the agreement; and

12 (ii) the Indian tribe to execute any  
13 needed corrective action;

14 (D) contain stipulations for amendments,  
15 termination, and public availability of the agree-  
16 ment once the agreement has been executed;  
17 and

18 (E) have a term of not more than 5 years,  
19 with an option for renewal based on a review by  
20 the Secretary of the performance of the Indian  
21 tribe.

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