

AMENDMENT TO H.R. 7

OFFERED BY MR. RAHALL OF WEST VIRGINIA

At the end of subtitle E of title I of the bill, add the following (and conform the table of contents accordingly):

1 **SEC. 1506. TRIBAL TRANSPORTATION SELF-GOVERNANCE**
2 **PROGRAM.**

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

6 **“§ 207. Tribal transportation self-governance pro-**
7 **gram**

8 “(a) ESTABLISHMENT.—Subject to the requirements
9 of this section, the Secretary shall establish and carry out
10 a program to be known as the tribal transportation self-
11 governance program. The Secretary may delegate respon-
12 sibilities for administration of the program as the Sec-
13 retary determines appropriate.

14 “(b) ELIGIBILITY.—

15 “(1) IN GENERAL.—An Indian tribe shall be eli-
16 gible to participate in the program if the Indian
17 tribe—

1 “(A) requests participation in the program
2 by resolution or other official action by the gov-
3 erning body of the Indian tribe; and

4 “(B) demonstrates, for the preceding 3 fis-
5 cal years, financial stability and financial man-
6 agement capability.

7 “(2) CRITERIA FOR DETERMINING FINANCIAL
8 STABILITY AND FINANCIAL MANAGEMENT CAPAC-
9 ITY.—For the purposes of paragraph (1)(B), evi-
10 dence that, during the preceding 3 fiscal years, an
11 Indian tribe had no uncorrected significant and ma-
12 terial audit exceptions in the required annual audit
13 of the Indian tribe’s self-determination contracts or
14 self-governance funding agreements with any Fed-
15 eral agency shall be conclusive evidence of the re-
16 quired stability and capability.

17 “(c) COMPACTS.—

18 “(1) COMPACT REQUIRED.—Upon the request
19 of an eligible Indian tribe, and subject to the re-
20 quirements of this section, the Secretary shall nego-
21 tiate and enter into a written compact with the In-
22 dian tribe for the purpose of providing for the par-
23 ticipation of the Indian tribe in the program.

24 “(2) CONTENTS.—A compact entered into
25 under paragraph (1) shall set forth the general

1 terms of the government-to-government relationship
2 between the Indian tribe and the United States
3 under the program and other terms that will con-
4 tinue to apply in future fiscal years.

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

9 “(d) ANNUAL FUNDING AGREEMENTS.—

10 “(1) FUNDING AGREEMENT REQUIRED.—After
11 entering into a compact with an Indian tribe under
12 subsection (c), the Secretary shall negotiate and
13 enter into a written annual funding agreement with
14 the Indian tribe.

15 “(2) CONTENTS.—

16 “(A) IN GENERAL.—

17 “(i) DISCRETIONARY AND COMPETI-
18 TIVE GRANTS.—A funding agreement en-
19 tered into with an Indian tribe shall au-
20 thorize the Indian tribe, as determined by
21 the Indian tribe, to plan, conduct, consoli-
22 date, administer, and receive full tribal
23 share funding and funding to tribes from
24 discretionary and competitive grants ad-
25 ministered by the Department for all pro-

1 grams, services, functions, and activities
2 (or portions thereof) that are made avail-
3 able to Indian tribes to carry out tribal
4 transportation programs and programs,
5 services, functions, and activities (or por-
6 tions thereof) administered by the Sec-
7 retary that are otherwise available to In-
8 dian tribes.

9 “(ii) TRANSFERS OF STATE FUNDS.—

10 “(I) INCLUSION OF TRANS-
11 FERRED FUNDS IN FUNDING AGREE-
12 MENT.—A funding agreement entered
13 into with an Indian tribe shall include
14 Federal-aid funds apportioned to a
15 State under chapter 1 if the State
16 elects to provide a portion of such
17 funds to the Indian tribe for a project
18 eligible under section 202(d).

19 “(II) METHOD FOR TRANS-
20 FERS.—If a State elects to provide
21 funds described in subclause (I) to an
22 Indian tribe, the State shall transfer
23 the funds back to the Secretary and
24 the Secretary shall transfer the funds

1 to the Indian tribe in accordance with
2 this section.

3 “(III) RESPONSIBILITY FOR
4 TRANSFERRED FUNDS.—Notwith-
5 standing any other provision of law, if
6 a State provides funds described in
7 subclause (I) to an Indian tribe—

8 “(aa) the State shall not be
9 responsible for constructing or
10 maintaining a project carried out
11 using the funds or for admin-
12 istering or supervising the project
13 or funds during the applicable
14 statute of limitations period re-
15 lated to the construction of the
16 project; and

17 “(bb) the Indian tribe shall
18 be responsible for constructing
19 and maintaining a project carried
20 out using the funds and for ad-
21 ministering and supervising the
22 project and funds in accordance
23 with this section during the ap-
24 plicable statute of limitations pe-

1 riod related to the construction of
2 the project.

3 “(B) ADMINISTRATION OF TRIBAL
4 SHARES.—The tribal shares referred to in sub-
5 paragraph (A) shall be provided without regard
6 to the agency or office of the Department with-
7 in which the program, service, function, or ac-
8 tivity (or portion thereof) is performed.

9 “(C) FLEXIBLE AND INNOVATIVE FINANC-
10 ING.—

11 “(i) IN GENERAL.—A funding agree-
12 ment entered into with an Indian tribe
13 under paragraph (1) shall include provi-
14 sions pertaining to flexible and innovative
15 financing if agreed upon by the parties.

16 “(ii) TERMS AND CONDITIONS.—

17 “(I) AUTHORITY TO ISSUE REGU-
18 LATIONS.—The Secretary may issue
19 regulations to establish the terms and
20 conditions relating to the flexible and
21 innovative financing provisions re-
22 ferred to in clause (i).

23 “(II) TERMS AND CONDITIONS IN
24 ABSENCE OF REGULATIONS.—If the
25 Secretary does not issue regulations

1 under subclause (I), the terms and
2 conditions relating to the flexible and
3 innovative financing provisions re-
4 ferred to in clause (i) shall be con-
5 sistent with—

6 “(aa) agreements entered
7 into by the Department under
8 section 202(d)(5) before the date
9 of enactment of the American
10 Energy and Infrastructure Jobs
11 Act of 2012; or

12 “(bb) regulations of the De-
13 partment of the Interior relating
14 to flexible financing contained in
15 part 170 of title 25, Code of
16 Federal Regulations, as in effect
17 on the date of enactment of such
18 Act.

19 “(3) DISCRETIONARY AND COMPETITIVE
20 GRANTS.—Notwithstanding any other provision of
21 law, an Indian tribe shall be eligible to directly apply
22 for and receive the discretionary and competitive
23 grants made available under transportation pro-
24 grams that States or political subdivisions of States
25 are eligible to apply for and receive.

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

3 “(A) terms that generally identify the pro-
4 grams, services, functions, and activities (or
5 portions thereof) to be performed or adminis-
6 tered by the Indian tribe; and

7 “(B) for items identified in subparagraph
8 (A)—

9 “(i) the general budget category as-
10 signed;

11 “(ii) the funds to be provided, includ-
12 ing those funds to be provided on a recur-
13 ring basis;

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

16 “(iv) the responsibilities of the Sec-
17 retary and the Indian tribe; and

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

20 “(5) SUBSEQUENT FUNDING AGREEMENTS.—

21 “(A) APPLICABILITY OF EXISTING AGREE-
22 MENT.—Absent notification from an Indian
23 tribe that the Indian tribe is withdrawing from
24 or retroceding the operation of one or more pro-
25 grams, services, functions, or activities (or por-

1 tions thereof) identified in a funding agreement,
2 or unless otherwise agreed to by the parties,
3 each funding agreement shall remain in full
4 force and effect until a subsequent funding
5 agreement is executed.

6 “(B) EFFECTIVE DATE OF SUBSEQUENT
7 AGREEMENT.—The terms of the subsequent
8 funding agreement shall be retroactive to the
9 end of the term of the preceding funding agree-
10 ment.

11 “(6) CONSENT OF INDIAN TRIBE REQUIRED.—
12 The Secretary shall not revise, amend, or require ad-
13 ditional terms in a new or subsequent funding agree-
14 ment without the consent of the Indian tribe that is
15 subject to the agreement unless such terms are re-
16 quired by Federal law.

17 “(e) GENERAL PROVISIONS.—

18 “(1) REDESIGN AND CONSOLIDATION.—

19 “(A) IN GENERAL.—An Indian tribe, in
20 any manner that the Indian tribe considers to
21 be in the best interest of the Indian community
22 being served, may—

23 “(i) redesign or consolidate programs,
24 services, functions, and activities (or por-

1 tions thereof) included in a funding agree-
2 ment; and

3 “(ii) reallocate or redirect funds for
4 such programs, services, functions, and ac-
5 tivities (or portions thereof), if the funds
6 are—

7 “(I) expended on projects identi-
8 fied in a transportation improvement
9 program approved by the Secretary;
10 and

11 “(II) used in accordance with ap-
12 propriations Acts and other applicable
13 statutory limitations.

14 “(B) EXCEPTION.—Notwithstanding sub-
15 paragraph (A), if, pursuant to subsection (d),
16 an Indian tribe receives a discretionary or com-
17 petitive grant from the Secretary or receives
18 State apportioned funds, the Indian tribe shall
19 use the funds for the purpose for which the
20 funds were originally authorized.

21 “(2) RETROCESSION.—

22 “(A) IN GENERAL.—

23 “(i) AUTHORITY OF INDIAN TRIBES.—
24 An Indian tribe may retrocede (fully or
25 partially) to the Secretary programs, serv-

1 ices, functions, or activities (or portions
2 thereof) included in a compact or funding
3 agreement.

4 “(ii) REASSUMPTION OF REMAINING
5 FUNDS.—Following a retrocession de-
6 scribed in clause (i), the Secretary may—

7 “(I) reassume the remaining
8 funding associated with the retroceded
9 programs, functions, services, and ac-
10 tivities (or portions thereof) included
11 in the applicable compact or funding
12 agreement;

13 “(II) out of such remaining
14 funds, transfer funds associated with
15 Department of Interior programs,
16 services, functions, or activities (or
17 portions thereof) to the Secretary of
18 the Interior to carry out transpor-
19 tation services provided by the Sec-
20 retary of the Interior; and

21 “(III) distribute funds not trans-
22 ferred under subclause (II) in accord-
23 ance with applicable law.

24 “(iii) CORRECTION OF PROGRAMS.—If
25 the Secretary makes a finding under sub-

1 section (f)(2)(B) and no funds are avail-
2 able under subsection (f)(2)(A)(ii), the
3 Secretary shall not be required to provide
4 additional funds to complete or correct any
5 programs, functions, or activities (or por-
6 tions thereof).

7 “(B) EFFECTIVE DATE.—Unless the In-
8 dian tribe rescinds a request for retrocession,
9 the retrocession shall become effective within
10 the timeframe specified by the parties in the
11 compact or funding agreement. In the absence
12 of such a specification, the retrocession shall
13 become effective on—

14 “(i) the earlier of—

15 “(I) 1 year after the date of sub-
16 mission of the request; or

17 “(II) the date on which the fund-
18 ing agreement expires; or

19 “(ii) such date as may be mutually
20 agreed upon by the parties and, with re-
21 spect to Department of the Interior pro-
22 grams, functions, services, and activities
23 (or portions thereof), the Secretary of the
24 Interior.

25 “(f) PROVISIONS RELATING TO THE SECRETARY.—

1 “(1) DECISIONMAKER.—A decision that con-
2 stitutes a final agency action and relates to an ap-
3 peal of the rejection of a final offer by the Depart-
4 ment shall be made either—

5 “(A) by an official of the Department who
6 holds a position at a higher organizational level
7 within the Department than the level of the de-
8 partmental agency in which the decision that is
9 the subject of the appeal was made; or

10 “(B) by an administrative judge.

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

13 “(A) AUTHORITY TO TERMINATE.—

14 “(i) PROVISION TO BE INCLUDED IN
15 COMPACT OR FUNDING AGREEMENT.—A
16 compact or funding agreement shall in-
17 clude a provision authorizing the Sec-
18 retary, if the Secretary makes a finding de-
19 scribed in subparagraph (B), to—

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

23 “(II) reassume the remaining
24 funding associated with the reassumed
25 programs, functions, services, and ac-

1 activities included in the compact or
2 funding agreement.

3 “(ii) TRANSFERS OF FUNDS.—Out of
4 any funds reassumed under clause (i)(II),
5 the Secretary may transfer the funds asso-
6 ciated with Department of the Interior
7 programs, functions, services, and activi-
8 ties (or portions thereof) to the Secretary
9 of the Interior to provide continued trans-
10 portation services in accordance with appli-
11 cable law.

12 “(B) FINDINGS RESULTING IN TERMI-
13 NATION.—The finding referred to in subpara-
14 graph (A) is a specific finding of—

15 “(i) imminent jeopardy to a trust
16 asset, natural resources, or public health
17 and safety that is caused by an act or
18 omission of the Indian tribe and that
19 arises out of a failure to carry out the
20 compact or funding agreement, as deter-
21 mined by the Secretary; or

22 “(ii) gross mismanagement with re-
23 spect to funds or programs transferred to
24 the Indian tribe under the compact or
25 funding agreement, as determined by the

1 Secretary in consultation with the Inspec-
2 tor General of the Department, as appro-
3 priate.

4 “(C) PROHIBITION.—The Secretary shall
5 not terminate a compact or funding agreement
6 (or portion thereof) unless—

7 “(i) the Secretary has first provided
8 written notice and a hearing on the record
9 to the Indian tribe that is subject to the
10 compact or funding agreement; and

11 “(ii) the Indian tribe has not taken
12 corrective action to remedy the mis-
13 management of funds or programs or the
14 imminent jeopardy to a trust asset, natural
15 resource, or public health and safety.

16 “(D) EXCEPTION.—

17 “(i) IN GENERAL.—Notwithstanding
18 subparagraph (C), the Secretary, upon
19 written notification to an Indian tribe that
20 is subject to a compact or funding agree-
21 ment, may immediately terminate the com-
22 pact or funding agreement (or portion
23 thereof) if—

24 “(I) the Secretary makes a find-
25 ing of imminent substantial and irrep-

1 arable jeopardy to a trust asset, nat-
2 ural resource, or public health and
3 safety; and

4 “(II) the jeopardy arises out of a
5 failure to carry out the compact or
6 funding agreement.

7 “(ii) HEARINGS.—If the Secretary
8 terminates a compact or funding agree-
9 ment (or portion thereof) under clause (i),
10 the Secretary shall provide the Indian tribe
11 subject to the compact or agreement with
12 a hearing on the record not later than 10
13 days after the date of such termination.

14 “(E) BURDEN OF PROOF.—In any hearing
15 or appeal involving a decision to terminate a
16 compact or funding agreement (or portion
17 thereof) under this paragraph, the Secretary
18 shall have the burden of proof in demonstrating
19 by clear and convincing evidence the validity of
20 the grounds for the termination.

21 “(g) COST PRINCIPLES.—In administering funds re-
22 ceived under this section, an Indian tribe shall apply cost
23 principles under the applicable Office of Management and
24 Budget circular, except as modified by section 450j-1 of
25 title 25, other provisions of law, or by any exemptions to

1 applicable Office of Management and Budget circulars
2 subsequently granted by the Office of Management and
3 Budget. No other audit or accounting standards shall be
4 required by the Secretary. Any claim by the Federal Gov-
5 ernment against the Indian tribe relating to funds received
6 under a funding agreement based on any audit conducted
7 pursuant to this subsection shall be subject to the provi-
8 sions of section 450j-1(f) of title 25.

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

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

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

21 “(i) CONSTRUCTION PROGRAMS.—

22 “(1) STANDARDS.—Construction projects car-
23 ried out under programs administered by an Indian
24 tribe with funds transferred to the Indian tribe pur-
25 suant to a funding agreement entered into under

1 this section shall be constructed pursuant to the con-
2 struction program standards set forth in applicable
3 regulations or as specifically approved by the Sec-
4 retary (or the Secretary's designee).

5 “(2) MONITORING.—Construction programs
6 shall be monitored by the Secretary in accordance
7 with applicable regulations.

8 “(j) FACILITATION.—

9 “(1) SECRETARIAL INTERPRETATION.—Except
10 as otherwise provided by law, the Secretary shall in-
11 terpret all Federal laws, Executive orders, and regu-
12 lations in a manner that will facilitate—

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

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

19 “(2) REGULATION WAIVER.—

20 “(A) IN GENERAL.—An Indian tribe may
21 submit to the Secretary a written request to
22 waive application of a regulation promulgated
23 under this section with respect to a compact or
24 funding agreement. The request shall identify

1 the regulation sought to be waived and the
2 basis for the request.

3 “(B) APPROVALS AND DENIALS.—

4 “(i) IN GENERAL.—Not later than 90
5 days after the date of receipt of a written
6 request under subparagraph (A), the Sec-
7 retary shall approve or deny the request in
8 writing.

9 “(ii) DENIALS.—The Secretary may
10 deny a request under clause (i) only if the
11 Secretary finds that the identified lan-
12 guage in the regulation may not be waived
13 because the waiver is prohibited by Federal
14 law.

15 “(iii) DEEMED APPROVAL.—If the
16 Secretary does not approve or deny a re-
17 quest submitted under subparagraph (A)
18 on or before the last day of the 90-day pe-
19 riod referred to in clause (i), the request
20 shall be deemed approved.

21 “(iv) FINALITY OF DECISIONS.—A de-
22 cision by the Secretary under this subpara-
23 graph shall be final for the Department.

24 “(k) DISCLAIMERS.—

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

4 “(A) maintain current Federal Highway
5 Administration Indian reservation roads pro-
6 gram and funding agreements; or

7 “(B) enter into new agreements under the
8 authority of section 202(d)(5).

9 “(2) LIMITATION ON STATUTORY CONSTRUC-
10 TION.—Nothing in this section may be construed to
11 impair or diminish the authority of the Secretary
12 under section 202(d)(5).

13 “(1) APPLICABILITY OF INDIAN SELF-DETERMINA-
14 TION AND EDUCATION ASSISTANCE ACT.—Except to the
15 extent in conflict with this section (as determined by the
16 Secretary), the following provisions of the Indian Self-De-
17 termination and Education Assistance Act shall apply to
18 compact and funding agreements (except that references
19 to the Secretary of the Interior in such provisions shall
20 treated as a references to the Secretary of Transpor-
21 tation):

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

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

5 “(3) Subsections (a), (b), (d), (e), (g), (h), (i),
6 and (k) of section 508 of such Act (25 U.S.C.
7 458aaa-7), relating to transfer of funds.

8 “(4) Section 510 of such Act (25 U.S.C.
9 458aaa-9), relating to Federal procurement laws
10 and regulations.

11 “(5) Section 511 of such Act (25 U.S.C.
12 458aaa-10), relating to civil actions.

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

19 “(7) Subsections (a) and (b) of section 515 of
20 such Act (25 U.S.C. 458aaa-14), relating to dis-
21 claimers.

22 “(8) Subsections (a) and (b) of section 516 of
23 such Act (25 U.S.C. 458aaa-15), relating to appli-
24 cation of title I provisions.

1 “(9) Section 518 of such Act (25 U.S.C.
2 458aaa-17), relating to appeals.

3 “(m) DEFINITIONS.—

4 “(1) IN GENERAL.—In this section, the fol-
5 lowing definitions apply (except as otherwise ex-
6 pressly provided):

7 “(A) COMPACT.—The term ‘compact’
8 means a compact between the Secretary and an
9 Indian tribe entered into under subsection (c).

10 “(B) DEPARTMENT.—The term ‘Depart-
11 ment’ means the Department of Transpor-
12 tation.

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

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

21 “(E) INDIAN TRIBE.—The term ‘Indian
22 tribe’ means any Indian or Alaska Native tribe,
23 band, nation, pueblo, village, or community that
24 the Secretary of the Interior acknowledges to
25 exist as an Indian tribe under the Federally

1 Recognized Indian Tribe List Act of 1994 (25
2 U.S.C. 479a). In any case in which an Indian
3 tribe has authorized another Indian tribe, an
4 inter-tribal consortium, or a tribal organization
5 to plan for or carry out programs, services,
6 functions, or activities (or portions thereof) on
7 its behalf under this part, the authorized Indian
8 tribe, inter-tribal consortium, or tribal organiza-
9 tion shall have the rights and responsibilities of
10 the authorizing Indian tribe (except as other-
11 wise provided in the authorizing resolution or in
12 this title). In such event, the term 'Indian tribe'
13 as used in this part shall include such other au-
14 thorized Indian tribe, inter-tribal consortium, or
15 tribal organization.

16 “(F) PROGRAM.—The term 'program'
17 means the tribal transportation self-governance
18 program established under this section.

19 “(G) SECRETARY.—The term 'Secretary'
20 means the Secretary of Transportation.

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

1 “(2) APPLICABILITY OF OTHER DEFINITIONS.—

2 In this section, the definitions set forth in sections
3 4 and 505 of the Indian Self-Determination and
4 Education Assistance Act (25 U.S.C. 450b; 458aaa)
5 apply, except as otherwise expressly provided in this
6 section.

7 “(n) REGULATIONS.—

8 “(1) IN GENERAL.—

9 “(A) PROMULGATION.—Not later than 90
10 days after the date of enactment of the Amer-
11 ican Energy and Infrastructure Jobs Act of
12 2012, the Secretary shall initiate procedures
13 under subchapter III of chapter 5 of title 5 to
14 negotiate and promulgate such regulations as
15 are necessary to carry out this section.

16 “(B) PUBLICATION OF PROPOSED REGULA-
17 TIONS.—Proposed regulations to implement this
18 section shall be published in the Federal Reg-
19 ister by the Secretary not later than 21 months
20 after such date of enactment.

21 “(C) EXPIRATION OF AUTHORITY.—The
22 authority to promulgate regulations under para-
23 graph (1) shall expire 30 months after such
24 date of enactment.

1 “(D) EXTENSION OF DEADLINES.—A
2 deadline set forth in paragraph (1)(B) or (1)(C)
3 may be extended up to 180 days if the nego-
4 tiated rulemaking committee referred to in
5 paragraph (2) concludes that the committee
6 cannot meet the deadline and the Secretary so
7 notifies the appropriate committees of Con-
8 gress.

9 “(2) COMMITTEE.—

10 “(A) IN GENERAL.—A negotiated rule-
11 making committee established pursuant to sec-
12 tion 565 of title 5 to carry out this subsection
13 shall have as its members only Federal and
14 tribal government representatives, a majority of
15 whom shall be nominated by and be representa-
16 tives of Indian tribes with funding agreements
17 under this title.

18 “(B) REQUIREMENTS.—The committee
19 shall confer with, and accommodate participa-
20 tion by, representatives of Indian tribes, inter-
21 tribal consortia, tribal organizations, and indi-
22 vidual tribal members.

23 “(C) ADAPTATION OF PROCEDURES.—The
24 Secretary shall adapt the negotiated rulemaking
25 procedures to the unique context of self-govern-

1 ance and the government-to-government rela-
2 tionship between the United States and Indian
3 tribes.

4 “(3) EFFECT.—The lack of promulgated regu-
5 lations shall not limit the effect of this section.

6 “(4) EFFECT OF CIRCULARS, POLICIES, MANU-
7 ALS, GUIDANCE, AND RULES.—Unless expressly
8 agreed to by the participating Indian tribe in the
9 compact or funding agreement, the participating In-
10 dian tribe shall not be subject to any agency cir-
11 cular, policy, manual, guidance, or rule adopted by
12 the Department of Transportation, except regula-
13 tions promulgated under this section.”.

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

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

