

115TH CONGRESS  
1ST SESSION

# S. 302

---

## AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “John P. Smith Act”.

3 **SEC. 2. DEFINITION OF SECRETARY.**

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

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

9 (a) **DEFINITION OF TRIBAL TRANSPORTATION SAFE-**  
10 **TY PROJECT.—**

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

16 (A) corrects or improves a hazardous road  
17 location or feature; or

18 (B) addresses a highway safety problem.

19 (2) **PROJECTS DESCRIBED.—**A project de-  
20 scribed in this paragraph is a project for one or  
21 more of the following:

22 (A) An intersection safety improvement.

23 (B) Pavement and shoulder widening (in-  
24 cluding the addition of a passing lane to remedy  
25 an unsafe condition).

1 (C) Installation of rumble strips or another  
2 warning device, if the rumble strips or other  
3 warning devices do not adversely affect the  
4 safety or mobility of bicyclists and pedestrians,  
5 including persons with disabilities.

6 (D) Installation of a skid-resistant surface  
7 at an intersection or other location with a high  
8 frequency of crashes.

9 (E) An improvement for pedestrian or bi-  
10 cyclist safety or the safety of persons with dis-  
11 abilities.

12 (F) Construction and improvement of a  
13 railway-highway grade crossing safety feature,  
14 including the installation of protective devices.

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

17 (H) Construction of a traffic calming fea-  
18 ture.

19 (I) Elimination of a roadside hazard.

20 (J) Installation, replacement, and other  
21 improvements of highway signage and pavement  
22 markings or a project to maintain minimum  
23 levels of retroreflectivity that addresses a high-  
24 way safety problem consistent with a State  
25 strategic highway safety plan.

1           (K) Installation of a priority control sys-  
2           tem for emergency vehicles at signalized inter-  
3           sections.

4           (L) Installation of a traffic control or other  
5           warning device at a location with high crash po-  
6           tential.

7           (M) Transportation safety planning.

8           (N) Collection, analysis, and improvement  
9           of safety data.

10          (O) Planning integrated interoperable  
11          emergency communications equipment, oper-  
12          ational activities, or traffic enforcement activi-  
13          ties (including police assistance) relating to  
14          work zone safety.

15          (P) Installation of guardrails, barriers (in-  
16          cluding barriers between construction work  
17          zones and traffic lanes for the safety of road  
18          users and workers), and crash attenuators.

19          (Q) The addition or retrofitting of struc-  
20          tures or other measures to eliminate or reduce  
21          crashes involving vehicles and wildlife.

22          (R) Installation of yellow-green signs and  
23          signals at pedestrian and bicycle crossings and  
24          in school zones.

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

4           (T) Geometric improvements to a road for  
5           the purposes of safety improvement.

6           (U) A road safety audit.

7           (V) Roadway safety infrastructure im-  
8           provements consistent with the recommenda-  
9           tions included in the publication of the Federal  
10          Highway Administration entitled “Handbook  
11          for Designing Roadways for the Aging Popu-  
12          lation” (FHWA-SA-14-015), dated June 2014  
13          (or a revised or updated publication).

14          (W) Truck parking facilities eligible for  
15          funding under section 1401 of MAP-21 (23  
16          U.S.C. 137 note; Public Law 112-141).

17          (X) Systemic safety improvements.

18          (Y) Installation of vehicle-to-infrastructure  
19          communication equipment.

20          (Z) Pedestrian hybrid beacons.

21          (AA) Roadway improvements that provide  
22          separation between pedestrians and motor vehi-  
23          cles, including medians and pedestrian crossing  
24          islands.

1           (BB) A physical infrastructure safety  
2           project not described in subparagraphs (A)  
3           through (AA).

4           (b) NEW CATEGORICAL EXCLUSIONS.—

5           (1) REVIEW OF EXISTING CATEGORICAL EXCLU-  
6           SIONS.—The Secretary shall review the categorical  
7           exclusions under section 771.117 of title 23, Code of  
8           Federal Regulations (or successor regulations), to  
9           determine which, if any, are applicable for use by  
10          the Secretary in review of projects eligible for assist-  
11          ance under section 202 of title 23, United States  
12          Code.

13          (2) REVIEW OF TRIBAL TRANSPORTATION  
14          SAFETY PROJECTS.—The Secretary shall identify  
15          tribal transportation safety projects that meet the  
16          requirements for categorical exclusions under sec-  
17          tions 1507.3 and 1508.4 of title 40, Code of Federal  
18          Regulations.

19          (3) PROPOSAL.—The Secretary shall issue a  
20          proposed rule, in accordance with sections 1507.3  
21          and 1508.4 of title 40, Code of Federal Regulations,  
22          to propose any categorical exclusions identified  
23          under paragraphs (1) and (2).

24          (4) DEADLINE.—Not later than 180 days after  
25          the date of enactment of this Act, and after consid-

1 ering any comments on the proposed rule issued  
2 under paragraph (3), the Secretary shall promulgate  
3 a final rule for the categorical exclusions, in accord-  
4 ance with sections 1507.3 and 1508.4 of title 40,  
5 Code of Federal Regulations.

6 (5) TECHNICAL ASSISTANCE.—The Secretary of  
7 Transportation shall provide technical assistance to  
8 the Secretary in carrying out this subsection.

9 (c) REVIEWS OF TRIBAL TRANSPORTATION SAFETY  
10 PROJECTS.—

11 (1) IN GENERAL.—The Secretary or the head of  
12 another Federal agency responsible for a decision re-  
13 lated to a tribal transportation safety project shall  
14 complete any approval or decision for the review of  
15 the tribal transportation safety project required  
16 under the National Environmental Policy Act of  
17 1969 (42 U.S.C. 4321 et seq.) or any other applica-  
18 ble Federal law on an expeditious basis using the  
19 shortest existing applicable process.

20 (2) REVIEW OF APPLICATIONS.—Not later than  
21 45 days after the date of receipt of a complete appli-  
22 cation by an Indian tribe for approval of a tribal  
23 transportation safety project, the Secretary shall—

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

1 (B) provide the Indian tribe a schedule for  
2 completion of the review described in paragraph  
3 (1), including the identification of any other  
4 Federal agency that has jurisdiction with re-  
5 spect to the project.

6 (3) DECISIONS UNDER OTHER FEDERAL  
7 LAWS.—In any case in which a decision under any  
8 other Federal law relating to a tribal transportation  
9 safety project (including the issuance or denial of a  
10 permit or license) is required, not later than 45 days  
11 after the Secretary has made all decisions of the  
12 lead agency under the National Environmental Pol-  
13 icy Act of 1969 (42 U.S.C. 4321 et seq.) with re-  
14 spect to the project, the head of the Federal agency  
15 responsible for the decision shall—

16 (A) make the applicable decision; or

17 (B) provide the Indian tribe a schedule for  
18 making the decision.

19 (4) EXTENSIONS.—The Secretary or the head  
20 of an applicable Federal agency may extend the pe-  
21 riod under paragraph (2) or (3), as applicable, by an  
22 additional 30 days by providing the Indian tribe no-  
23 tice of the extension, including a statement of the  
24 need for the extension.

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

6           (A) notify the Committee on Indian Affairs  
7 of the Senate and the Committee on Natural  
8 Resources of the House of Representatives of  
9 the failure to comply with the deadline; and

10           (B) provide to the Committees described in  
11 subparagraph (A) a detailed explanation of the  
12 reasons for the failure to comply with the dead-  
13 line.

14 **SEC. 4. PROGRAMMATIC AGREEMENTS FOR CATEGORICAL**  
15 **EXCLUSIONS.**

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

21           (b) INCLUSIONS.—A programmatic agreement under  
22 subsection (a)—

23           (1) may include an agreement that allows an  
24 Indian tribe to determine, on behalf of the Sec-  
25 retary, whether a project is categorically excluded

1 from the preparation of an environmental assess-  
2 ment or environmental impact statement under the  
3 National Environmental Policy Act of 1969 (42  
4 U.S.C. 4321 et seq.); and

5 (2) shall—

6 (A) require that the Indian tribe maintain  
7 adequate capacity in terms of personnel and  
8 other resources to carry out applicable agency  
9 responsibilities pursuant to section 1507.2 of  
10 title 40, Code of Federal Regulations (or suc-  
11 cessor regulations);

12 (B) set forth the responsibilities of the In-  
13 dian tribe for making categorical exclusion de-  
14 terminations, documenting the determinations,  
15 and achieving acceptable quality control and  
16 quality assurance;

17 (C) allow—

18 (i) the Secretary to monitor compli-  
19 ance of the Indian tribe with the terms of  
20 the agreement; and

21 (ii) the Indian tribe to execute any  
22 needed corrective action;

23 (D) contain stipulations for amendments,  
24 termination, and public availability of the agree-

1           ment once the agreement has been executed;  
2           and  
3           (E) have a term of not more than 5 years,  
4           with an option for renewal based on a review by  
5           the Secretary of the performance of the Indian  
6           tribe.

Passed the Senate November 29, 2017.

Attest:

*Secretary.*

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