

**TALKING POINTS IN SUPPORT OF
TRIBAL CONSENSUS PROVISIONS FOR
HOUSE-SENATE CONFERENCEON H.R. 4348
April 30, 2012**

GENERAL OBSERVATIONS REGARDING TRANSPORTATION IN INDIAN COUNTRY

- The United States has a trust obligation to construct and maintain Federal roads on Indian reservations in a state of good repair.
- The current level of federal and local funding has been insufficient to address the large, unmet transportation needs of Tribal communities, making tribal transportation systems the most dangerous and unreliable of any transportation network in the country.
- Congressional hearings have demonstrated time and again the need for increased federal funding to reduce traffic fatalities, spur job creation and promote economic development in Indian Country.
- The proposed Tribal consensus provisions, all but two of which are “no cost” proposals, will enable Tribal governments to grow their own capacity to deliver safe, reliable and effective transportation infrastructure, traffic safety and transit programs for the benefit of their tribal members and all those who travel within Indian Country.

1. **Authorization and Appropriations**

- A. **Tribal Transportation Program** - Support the higher (**H.R. 7**) funding level (\$465 million per year) for the Tribal Transportation Program (TTP) to fund core TTP planning, engineering, and construction activities, rehabilitation and replacement of deficient bridges, highway safety and other eligible activities.
- B. **Tribal Transit Program** – Support the retention of **MAP-21** sec. 20012 text (amending 49 U.S.C. Sec. 5311) (“Public Transportation on Indian Reservations”) which increases Tribal transit grant funding to \$30 million annually, continues the current competitive grant program and adds a much needed recurring tribal transit funding program (Sec. 5311(k)).

2. **Exemption of TTP from Obligation Ceiling and Authorizing Redistribution of Unused Obligation Authority**

- A. **Exemption of TTP allocations from obligation authority** – Support retention of **MAP-21** provisions (Sec. 1102(c)(2) and 1102(f)(1)) which expressly exempt TTP from distribution of obligation authority;
- B. **Redistribution of unused obligation authority** – Support retention of **H.R. 7** provision (Sec. 1501 amending 23 U.S.C. 202(c)(6) of title 23), that sets aside 10 percent of unused obligation authority for competitively awarded high priority projects for Indian tribes and Alaska Native communities that are remotely located from products and essential markets.

3. **Data Reporting** – Support **HR 7** provision (Sec. 1501, amending 23 U.S.C. 201(e)(6)(C) of title 23) to ensure data collection relating to the tribal transportation program is consistent with the Indian Self-Determination and Education Assistance Act, P.L. 93-638.
4. **Maintenance** – Support **MAP-21** and **HR 7** provisions authorizing the use of the greater of \$500,000 or 25% of a Tribe’s TTP “Tribal shares” for “the purpose of maintenance” with a technical correction to clarify that the decision is up to the Indian tribe. As more tribes assume Secretarial duties for all aspects of transportation infrastructure (planning, design, construction and maintenance), tribes should not lose budget and decision-making authority. This provision continues current law (23 U.S.C. 204(c)) by granting Tribal governments, or the Secretary with the permission of a tribal government, the needed flexibility to use TTP funds to cover chronic shortfalls in the **BIA Road Maintenance Program** to address routine and emergency road maintenance needs.
5. **BIA and FHWA Administrative Expenses for TTP** – Support provision from Sec. 1501 of **HR 7** authorizing administrative expenses of up to 5 percent of the appropriated amount for the BIA and FHWA for oversight of the TTP, which authorization is not included in the Senate-passed **MAP-21**. The BIA currently receives 6% for its Program Management and Oversight (PM&O) and Project-Related Administrative Expenses (PRAE) and from this authorization pays 100% of Tribal Technical Assistance Program (TTAP) costs and costs for the regulatory-mandated IRR Program Coordinating Committee, the joint Tribal-Federal advisory body to the BIA and FHWA which advises the agencies regarding the IRR Program. FHWA also shares a portion of the BIA’s PM&O and PRAE budget, including some payment to tribes, for its assumption of duties under the FHWA-IRR Program Agreements with Indian tribes, as authorized under SAFETEA-LU.
6. **State use of Federal Funds for Tribal Transportation Facilities** – Support **HR 7** streamlining tribal access to and the prompt receipt of Federal transportation funds under chapter 1 and 4 of title 23 (Federal-aid and highway safety funds) and authorizes State Departments of Transportation (State DOT) fund transfers to an Indian tribe, either directly or through existing Interior Department self-determination agreements and self-governance agreements or through the SAFETEA-LU authorized FHWA IRR Program Agreements. The provision also limits State DOT responsibility for the project once these Federal funds have been transferred to a Tribe during the period of the applicable State statute of limitations. This amendment makes it easier for Tribes and State DOTs to partner effectively on mutually beneficial transportation projects without either government being legally responsible for the work of the other government. This will, in turn, eliminate the need for costly and time-consuming legal negotiations to resolve jurisdictional, sovereign immunity and indemnification disputes.
7. **Competitive bidding** – Support **HR 7** version of provision regarding competitive bidding to clarify that tribal force account construction work and other reasonable procurement methods are an accepted means to perform construction work, in addition to regular competitive bidding

practices. This provision also allows Indian tribes to ensure that Indian and Tribal preferences are maintained in the hiring of construction contractors so that transportation funds remain in the local community.

8. **Contracts and agreements with Indian tribes for Tribal transportation programs and projects** -

Support **HR 7** provision further streamlining the transfer of Federal-Aid, Federal Lands Transportation Programs, Highway Safety, and Public Transportation (transit) funds to Indian tribes through existing self-determination and self-governance agreements and FHWA-Tribe IRR Program Agreements. At present, it is difficult, costly and time-consuming for Federal and State agencies to successfully transfer Federal-Aid funds, Highway Safety Improvement Program funds, FHWA Emergency Relief of Federally Owned Roads (ERFO) funds, Federal and State-administered public transportation funds and grants to Indian tribes for their use. These amendments will make these difficult and needlessly costly fund transfers much quicker and easier for all concerned, be it the States, Tribes or the Federal government.

9. **Tribal Eligibility for Discretionary and Competitive Grants** – Support **HR 7** provision from sec. 1501 (amending Sec. 202(f) of title 23), to streamline discretionary and competitive grants for Indian tribes. Since 2006, Indian tribes have received over \$150 million from non-IRR Program title 23 federal highway funding sources to improve road conditions and highway safety. The underlying bill eliminates most tribal set asides and eligibility for many existing federal programs that are now consolidated. This provision will clarify that Indian tribes, as sovereign transportation “public authorities,” are eligible to apply directly to the Secretary of Transportation for any discretionary or competitive grant which the new highway legislation makes available to a State DOT or to a political subdivision of a State, while providing no special privilege to the Indian Tribe. The Tribe must demonstrate its entitlement to the grant funds in the same manner and under the same circumstances as a State DOT or local municipality.

10. **Tribal Transportation Self-Governance Program** – Support the **HR 7** provision (Sec. 1506) to establish a new section in title 23 entitled: “Tribal Transportation Self-Governance Program.”

Since 1975, the Indian Self-Determination and Education Assistance Act, P.L. 93-638, has been one of the most successful Federal Indian programs of the last half century, and has been largely responsible for the growth, sophistication and strengthening of Tribal governments, and for the creation of thousands of jobs and livelihoods on Indian reservations and in Native Alaskan communities today.

This amendment would extend the requirements of the Self-Governance Program to the U.S. Department of Transportation.

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