

**EXECUTIVE SUMMARY OF
MOVING AHEAD FOR PROGRESS IN THE 21ST CENTURY (“MAP-21”)
AS APPROVED BY THE SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE
ON NOVEMBER 9, 2011**

MAP-21’S PROPOSED FUNDING LEVELS

- Increases Federal-Aid funding for States over the next two fiscal years to adjust for inflation (\$39.143 billion in FY 2012 and \$39.806 billion in FY 2013);
- Decreases the current combined funding level for the Indian Reservation Roads (“IRR”) Program and IRR Bridge Program by at least \$14 million, from the current level of \$464 million to \$450 million for FY 2012-2013;
- Eliminates four separately-funded competitive programs that have recently provided Tribes with over \$50 million annually above their regular IRR Program funds: IRR Bridge Program grants, Tribal Scenic Byways grants, Public Lands Discretionary grants, and the IRR High Priority Project (IRRHPP) grants;
- Reauthorizes highway and transit programs for 2 years; the House is planning to introduce a 6 year highway reauthorization bill as part of its “American Energy & Infrastructure Jobs Act” (H.R. 7) in December 2011.

TRIBAL TRANSPORTATION PROGRAM

- The “IRR Program” is renamed the “Tribal Transportation (“TTP”) Program”;
- MAP-21 reauthorizes many provisions originally included in SAFETEA-LU, P.L. 109-59 (2005):
 - Reaffirms Secretaries’ (USDOT and DOI) existing authority to contract with tribes for the planning, maintenance, engineering, rehabilitation, construction and reconstruction of transportation facilities;
 - Reauthorizes the use of Indian labor to carry out construction or other activity authorized for the TTP;
 - Reauthorizes the Secretary of the Interior funding of Tribal Technical Assistance Centers;
 - Amends existing statutory authority to grant greater discretion to the Secretary of the Interior and Tribes to use the greater of 25% of a Tribe’s TTP allocation or \$500,000 for maintenance;
 - Reaffirms Tribe-State Road Maintenance Agreements;
 - Expressly recognizes that the Indian preference in hiring, training and the award of subcontracts to Indian-owned economic enterprises applies to all funds administered by the Secretary of the Interior that are appropriated for construction and improvement of Tribal transportation facilities;
 - Requires the Secretary of the Interior to maintain a comprehensive national inventory of Tribal transportation facilities eligible for assistance under the TTP;
 - Reaffirms SAFETEA-LU’s directive to BIA to complete fund transfers to Tribes within 30-days;
 - Reaffirms SAFETEA-LU’s Tribal PS&E Approval Authority;
 - Reaffirms authority of Tribes to contract directly with the FHWA to assume duties for the TTP.
 - Subject to Indian preference requirements, imposes new competitive bidding requirements on Tribal transportation projects that may only be waived at the discretion of the Secretary of Transportation or the Secretary of the Interior.

MAP-21’s Changes to the TTAM Funding Formula

- The TTAM’s RNDF (50% CTC + 30% VMT + 20% POP), PAF and IRRHPP components are eliminated and a new TTP funding formula substituted comprised of three major elements: (20% “eligible lane mileage” + 40% NAHASDA POP + 40% NAHASDA POP sliding scale) and a “Tribal Supplemental Allocation”;
- MAP-21 diminishes the importance of road inventories and eliminates discretionary awards.
- The bill counts every eligible lane mile of paved and gravel roads in a Tribe’s inventory 2-for-1, and counts eligible earth and unimproved lane miles 1-for-1.*

Other MAP-21 amendments impacting the TTP program:

- Requires the Secretary of Transportation, in collaboration with the Secretaries of the appropriate federal land management agencies, to coordinate a uniform policy for all public Federal and Tribal transportation facilities;
- Reaffirms the Federal share of the cost of a project carried out under TTP is 100%;

**Please see Attachment 1 for our projected estimate of the likely breakdown of MAP-21’s \$450 million for the TTP in FY 2013. We used actual FY 2011 takedowns in our estimated table for FY 2013 that are reflected in BIADOT’s FY 2011 Control Panel for the IRR Program. We held those takedowns constant in preparing the FY 2013 TTP funding estimates.*

- Requires the Secretary of Transportation to implement transportation planning procedures for Tribal transportation facilities consistent with the planning processes required under §§ 134 (metropolitan transportation planning) and 135 (statewide transportation planning) of title 23.
- Requires that regionally-significant Tribal, Federal lands, and Federal lands access programs be developed in cooperation with state and metropolitan planning organizations, and included in appropriate Tribal, Federal lands, and Federal lands access transportation program plans; State and metropolitan plans; and transportation improvement programs;
- Requires the DOT and the DOI to implement safety, bridge, pavement, and congestion management systems for facilities funded under the TTP in support of asset management;
- Directs the Secretary of Transportation to collect and report data necessary to implement the TTP.

ACCESS TO OTHER PROGRAMS

- Consolidates the currently-existing core FHWA programs from seven to five. The five core programs are:
 - The National Highway Performance Program [NEW] – consolidates the Interstate Maintenance, National Highway System, and Highway Bridge programs;
 - The Transportation Mobility Program [NEW] – a new core program that replaces the current Surface Transportation Program;
 - The National Freight Network Program [NEW] – a new core program that consolidates existing programs into one that provides funds to the states by formula for projects to improve regional and national freight movements on highways;
 - The Congestion Mitigation and Air Quality Improvement Program – an existing core program that provides funds for transportation projects designed to reduce traffic congestion and improve air quality;
 - Highway Safety Improvement Program – builds on existing HSIP and increases funding for safety.
- Includes Tribes as eligible funding recipients only in the Transportation Infrastructure Finance and Innovation (“TIFIA”) core program (increased to \$1.0 billion/yr), not the new “Mobility” and “Safety” core programs.
 - To be eligible as a TIFIA project, the project would be required to have eligible project costs that are anticipated to equal at least the lesser of \$50 million (or \$25 million in the case of a rural infrastructure project), or 33 and 1/3% of the amount of federal highway assistance funds apportioned for the most recently completed fiscal year to the state in which the project is located.
- The Projects of National and Regional Significance Program – this program funds critical high-cost surface transportation projects that are difficult to complete with existing public and private funds, including projects that reduce congestion, improve roadways vital to national energy security, and improve transportation safety. Tribal governments and consortia of Tribal governments are eligible for direct funding from this program.
- The Emergency Relief Program – authorizes emergency funds for the repair or reconstruction of highways, roads, and trails, including those within Indian reservations, which have suffered damage due to a natural disaster or catastrophic failure from any external cause.

RECOMMENDATIONS TO IMPROVE MAP-21

- Fund the TTP at \$500 million in FY 2012; \$550 million in FY 2013 to account for inflation and need;
- Exempt the TTP from the obligation limitation deduction (IRR Program lost \$33 million in FY 2011);
- Include Tribes as direct funding recipients under the new Mobility and Safety programs, as well as for NHTSA safety grants under 23 U.S.C. §§ 402 (HSIP), 405 (Occupant protection grants), 407 (innovative project grants), 408 (alcohol traffic safety grants), and 410 (alcohol-impaired driving countermeasures);
- Make Tribes direct recipients of FHWA ERFO and Homeland Security FEMA grants (with lower thresholds) in the same manner that USDOT Secretary awards funds to Tribes under Chapter 2 of title 23;
- Expand Tribal self-governance into all USDOT administrations and streamline tribal-state-federal fund transfers using Indian self-determination and self-governance contracting principles;
- Increase funding of TTAPs to \$2.0 million annually from BIA PM&O account to build tribal capacity for the delivery of transportation, transit and highway safety programs and projects;
- Include additional non-funding provisions from the Senate Indian Affairs Committee's draft TRIP bill.