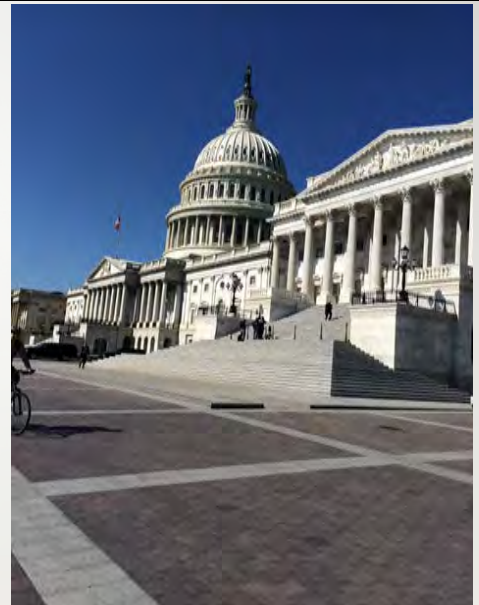


2020 ITA “VIRTUAL”
ANNUAL MEETING:
Transportation Legislative
Roadmap
December 10, 2020

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SONOSKY, CHAMBERS, SACHSE,
ENDRESON & PERRY, LLP
NOVEMBER 30, 2020



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2020 Presidential Election:

Former VP Joe Biden is the President-elect and former CA Senator Kamala Harris is the Vice President-elect.

Popular Votes: 81.2 million = Joe Biden
74.2 million = Donald Trump

Electoral Votes: 306 = Joe Biden
232 = Donald Trump

Swing State Won by Biden = Wisconsin, Michigan, Minnesota, Pennsylvania, Georgia, Nevada and Arizona.

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With narrow majorities in the House and Senate, the bottom line for the 117th Congress is that bipartisanship and compromise will be required to accomplish anything in the new Congress that begins January 3, 2021.



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U.S. HOUSE (Democrats with slim 4-vote majority):

The House of Representatives will remain in Democratic control, but with a smaller House majority (about 222 seats to their current 232-197 margin). Republicans hold 210 seats but there remain several unresolved House contests that appear to lean Republican.

House Speaker = Nancy Pelosi

House Minority Leader = Kevin McCarthy

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U.S. SENATE:

Control of the Senate will not be decided until a January 5, 2021. That is when a Senate run-off for both Georgia Senate seats will occur.

The Senate is now 50 Republicans and 48 Democrats and Independents (who caucus with the Ds).

Either Senator Mitch McConnell (R-KY) or Senator Chuck Schumer (D-NY) will lead their respective caucus in the next term as Senate Majority Leader.

Democrats must win both Georgia Senate seats in the 2021 runoff to permit Vice President Harris (when sworn in) to break a 50-50 Senate tie vote on any issue. Otherwise, Republicans will remain in control of the Senate.

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117th Congressional Control Delays Spell Presidential Transition Trouble in early 2021:

- Likelihood of delay in Senate approval of “organizing resolution,” creating new majority ratios on Senate committees between the controlling party and the minority party and installing new chairmen/chairwomen, until Georgia Senate runoff elections are determined by the State and certified.
- Control of Senate and who chairs key Senate Committee may delay confirmation of President-Elect Biden’s cabinet nominees.
- Senate Chair retirements:
 - Lamar Alexander (TN) retires as Senate HELP Comm. Chairman (confirms DHHS Secretary nominee)
 - Mike Enzi (WY) retires as Senate Budget Comm. Chairman (confirms OMB Director nominee)
 - Pat Roberts (KS) retires as Senate Agriculture Comm. Chairman (confirms USDA Secretary nominee)
 - Senate Judiciary Committee – Lindsay Graham (SC) is term limited and Sen. Chuck Grassley wants to resume as Chairman, leaving Senate Finance Committee Chair to Idaho Senator Mike Crapo if Rs hold the Senate)
 - Senators Rand Paul (KY) and Richard Burr (NC) seek to Chair the Senate HELP Comm if Rs retain the Senate

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President-Elect Biden's Cabinet Nominees (announced):

- Secretary of DHHS Xavier Becerra (CA AG and former CA Congressman)
- CDC Director Dr. Rochelle Walensky (infectious disease physician (Mass. Gen. and Harvard Prof.))
- Treasury Secretary Janet Yellen (former Federal Board Chairperson)
- USDA Tom Vilsack (former USDA Sec. (Obama) and Iowa governor)
- Homeland Security Alejandro Mayorkas
- Defense Lloyd Austin (Former 4-Star General; headed U.S. Central Command)
- Secretary of State Antony Blinken
- Special Presidential
 Envoy for Climate John F. Kerry, former Senator and Secretary of State
- OMB Director Neera Tanden (President of Center for American Progress)
- UN Ambassador Linda Thomas-Greenfield
- NSA Director Jake Sullivan
- Nat'l Intel. Avril Haines
- Chief of Staff Ron Klain

Potential Cabinet Nominees (not announced as of November 30, 2020):

- Interior Secretary Congresswoman Deb Haaland, former Senators Tom Udall or Carol Moseley Braun
- Labor Secretary Andy Levin, Senator Bernie Sanders
- Attorney General Doug Jones, Sally Yates, Deval Patrick, Lisa Monaco

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Lame Duck Priorities:

- 1) FY 2021 spending measure - Reconcile differences in House and Senate FY 2021 spending measures and pass an omnibus appropriations bill before December 11, 2020 or pass a short extension to complete the FY 2021 spending measure before adjournment before Christmas; House passed 1-week extension (12/18/20); Senate is poised.
- 1) COVID-19 relief measure – The House passed a \$2.2 trillion relief measure earlier this year, but the Senate couldn't pass a \$500 billion COVID-19 relief measure this fall. The two sides and the WH remain apart on the size of federal relief and whether unemployment insurance should be extended or whether additional federal relief should be provided to States, local governments and Tribes; a bipartisan group is pushing a \$906 billion measure; the WH (Sec. Mnuchin) proposed a \$916 billion measure with \$600 unemployment checks that is causing further debate among GOP members.

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As for reauthorization of the FAST Act, the next 12-24 months will prove decisive regarding the direction the Nation and Indian Country take concerning the next highway measure.

Congress extended the FAST Act one year in the Continuing Appropriation (CR) passed in September. The FAST Act now expires on *September 30, 2021*.

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The greatest challenge for the country is developing consensus concerning how to pay for a large infrastructure bill. That is what has traditionally delays reauthorization of successor surface transportation bills.

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In the 117th Congress that begins January 3, 2021, regardless of party control, **Tribes** will need to advocate for the best provisions from Senator Barrasso's ATIA bill, S. 2302, and from the House-passed H.R. 2, Moving America Forward Act (which includes the House T&I Committee's INVEST in America Act), to be reintroduced by key Congressional allies and included in any reauthorization measure debated and passed in 2021.

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- Given the narrow margins by which the political parties control the House and Senate, it will be consensus legislation, backed by broad support among stakeholders, like Tribes and TOs, that has the greatest chance to move through each chamber and be enacted into law.
- Bills that are not broadly supported, or which contain controversial provisions, will be set aside because they have little chance of passing either chamber.
- Indian Tribes and Tribal organizations, like ITA and NCAI, must work to create a broad coalition of Tribes to make known their support to members of the 117th Congress and to the incoming Biden Administration concerning transportation construction, transit, and highway safety measures important to Indian country.
- Without broad Tribal support from all parts of the country, some Tribal provisions will not be included in the final bills, or the levels of federal appropriation for Tribal programs will be scaled back in size and Congress will prioritize other programs that have broad bipartisan support.

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Both parties have given some idea of their transportation priorities:

- The Senate EPW-passed “America’s Transportation Infrastructure Act of 2019 (“ATIA”), S. 2302 (July 2019); the measure includes a number of Tribal provisions.
- Senators Thune and Sinema introduced S. 3359, the “Tribal Transportation Equity and Transparency Investment Act of 2020,” (February 2020);
- The House-passed its \$1.5 trillion “Moving America Forward Act,” H.R. 2 (July 1, 2020), incorporating the House T&I Committee-passed “INVEST in America Act, with numerous pro-Tribal provisions, including \$800 million authorization for the Tribal Transportation Program.
- The House-passed FY 2021 Interior, Environment and Related Agencies appropriations bill with \$15 billion in infrastructure investments for BIE, IHS and EPA. The Senate Appropriations Committee released 12 bills, including an Interior spending measure with no emergency infrastructure spending. Congress may extend the current FY 2021 CR beyond December 11, 2020 if it cannot complete an FY 2021 omnibus bill by December 11th.

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House and Senate transportation reauthorization bills not passed in identical form in both chambers die at the end of the current Congress. The highway measures will have to be reintroduced in the new Congress and House and Senate members will have to work with a new President to enact them. **Tribes must be active legislative players to ensure that bill provisions important to Tribes are enacted into law.**

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USDOT TTSGP Negotiated Rulemaking Committee (Tribal-Federal representatives with technical/legal staff) March 2020

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Over the last 3 decades, Tribes have made significant gains to increase recurring Federal appropriations for transportation improvements:

- **ISTEA** (1991) \$191 million annually for the Indian Reservation Roads (IRR) Program
- **TEA-21*** (1998) \$225 - \$275 mil. (IRR) (authorized TEA-21 Negotiated Rulemaking Comm.)
- **SAFETEA-LU*** (2005-2012) \$300 - \$450 mil. (IRR) (authorized direct agreements with FHWA)
\$14 mil. (IRR Bridge grants from HTF dollars)
\$8-\$15 mil. (Tribal Transit Program competitive grants)
- **ARRA*** (2009 – 2010) \$310 mil. + \$141 mil. (IRR Program and BIA System maintenance)
- **MAP-21** (2012-2014) **\$450 mil.** (Tribal Transportation Program) (funding decrease and loss of Part
\$30 mil. (Tribal Transit 25/5) **170 HPP Program**)
2% (safety fund discretionary grant set aside w/in TTP)
2% (TTP bridge facility grant program set aside w/in TTP)
- **FAST Act*** (2015-2020) \$465 - \$505 mil. (TTP Authorization) (authorized TTSGP Rulemaking (49 CFR Part 29)
\$30 mil. (Tribal Transit Program)
3% (TTP Bridge Facility grant program set aside)
2% (safety grant set aside)
- **H.R. 2** (House) ('21-'25) \$800 mi. (TTP Authorization)

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Events that Empower Tribes in the Transportation Arena

- 2005 - 25 CFR Part 170 (final rule) – Negotiated rulemaking transforming the IRR Program into a “tribal shares” formula-based program;
- 2005-2012 - SAFETEA-LU’s stepped increases to the IRR Program and 5311 FTA grants to add tens of millions to transportation infrastructure;
- 2005 - present - Tribes assuming the IRR/TTP Program under the ISDEAA and title 23 authorities;
- 2006 – present – Direct contracting with FHWA of the IRR Program by Tribes;
- 2009-2010 - ARRA’s \$450 million investment in Indian country;
- 2012 – 2014 – **MAP-21 (contraction of federal authorization levels for Tribes)**
- 2015 – Enactment of the FAST Act – TTP increases and extension of the Self-Governance Program to USDOT;
- 2020 – TTSGP Rulemaking Committee completes final rule (49 CFR Part 29);
- 2020 – President signs the PROGRESS for Indian Tribes Act into law.

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Roads, highways, bridges, marine ports, and transit systems serving Alaska Natives and American Indians, however, are still more rudimentary, and are in far worse shape, than the average roadway and transit system in the country. These challenges, combined with rurality, contributes in part to the worst safety and mortality statistics for motor vehicle crash fatalities and pedestrian deaths among AIANs than for any group in the country. Tribal advocacy remains key.



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According to the Centers for Disease Control (CDC):

- Unintentional injuries are the leading cause of death for AIAN ages 1 to 44;
- Motor vehicle crashes are the leading cause of unintentional injury death for AIAN adults (over age 20), and are more than twice that of non-Hispanic whites.
- Among AIAN aged 1 to 19 years, motor vehicle crashes are the lead cause of death.
- Among AIAN infants less than one year of age, the motor vehicle traffic death rate among AIAN infants is eight (8) times higher than the traffic death rate of non-Hispanic whites.

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WHAT DOES CONGRESS DO TO REMEDY THESE CONDITIONS?

Hold oversight hearings to highlight existing conditions and solicit proposals from Tribal officials to remedy conditions that undermine community health and safety and the conditions necessary for economic development.



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- **House Transportation and Infrastructure Subcommittee on Highways and Transit** (February 6, 2020) - Hearing on “Assessing the Transportation Needs of Tribes, Federal Land Management Agencies and U.S. Territories” – Committee introduces INVEST in America Act on June 3, 2020, approves it on June 19, 2020, and incorporates it into the House-passed Moving America Forward Act, HR 2;
- **House Natural Resources Subcommittee on Indigenous Peoples of the United States** (July 11, 2019) – Hearing on “Tribal Infrastructure: Roads, Bridges, and Buildings” highlighting infrastructure deficiencies in Indian Country;
- **Senate Indian Affairs Committee** (April 3, 2019 and May 15, 2019) – Hearings on “Enhancing Tribal Self-Governance and Safety of Indian Roads” and to receive testimony on S. 1211 (“Addressing Underdeveloped and Tribally-Operated Streets (AUTOS) Act – S. 1211 introduced and favorably reported out of the Committee on June 19, 2019;
- **Senate EPW Hearing** (Mar. 6, 2019) – “Hearing on the Economic Benefits of Highway Infrastructure Investment & Accelerated Project Delivery” – S. 2302 (ATIA) introduced and favorably reported out of the Committee on August 1, 2019.

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The Historic Nature of the February 6, 2020 House T&I Subcommittee Hearing

- First time in memory of Committee Chairs that Tribal witnesses testified on reauthorization and the transportation infrastructure needs of their communities and Indian country in general;
 - Tribal Witness: ITA President Mary Beth Frank Clark; and
 - Tribal Witness: Ohkay Owingeh Head Councilman Joe Garcia

President Clark and Head Councilman Garcia provided testimony to the great unmet transportation, transit, and highway safety needs of Indian country and the obligation of the United States to honor its treaties and trust obligations to the Indian Nations and their members.

Congress listened and incorporated many of the ITA/NCAI recommendations into HR 2 which then passed the full House on July 1, 2020.

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HR 2's Tribal Provisions:

1. Increase the TTP Program – HR 2 grows the TTP Program to \$800 million in FY 2022-2025;
2. Restore the Favorable Exemption to the “Obligation Limitation Deduction” that has removed hundreds of millions of dollars from the IRR and TTP programs – HR 2 restores the exemption;
3. Restore a Tribal High Priority Projects (HPP) Discretionary Grant Program – HR 2 restores the HPP and finances it with HTF dollars (\$50 mil.) and annual appropriations;
4. Increase discretionary/competitive grants for Tribes and lower dollar thresholds to qualify – HR 2 creates the Federal Lands and Tribal Major Projects Program with HTF of \$400 mil., increases the Federal share of Tribal projects to 100%, lowers the threshold for Tribes to \$5 million, and divides funds 50/50 between federal lands and Tribes;

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HR 2's Tribal Provisions:

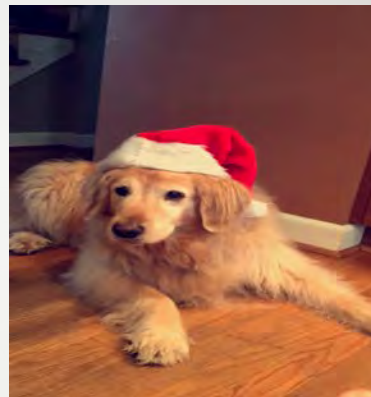
5. Increases FTA's 5311(c)(1) Tribal Transit Program funding to \$45.6 million in FY 2022 and double the discretionary grant to \$10 million annually;
6. Amend the TTP Facility Bridge Program to authorize the planning and construction of new bridges and maintain a 3% takedown (\$24 million annually);
7. Amend the TTP 2% Safety Fund Grant Program to allow for projects that promote public awareness and education (also amending 23 USC 148's Highway Safety Improvement Program to expand authorized uses of grant funds);
8. Establish an Office of Tribal Affairs to USDOT to oversee the TTSGP as well as elevate the position of Deputy Assistant Secretary for Tribal Government Affairs to a Deputy Secretary position;
9. Increase the number of USDOT discretionary grants available to Tribes as direct grant recipients.

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QUESTIONS?

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HAPPY
HOLIDAYS!

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