

**SPRING 2019
LEGISLATIVE
UPDATE: TRIBAL
TRANSPORTATION**

Challenges and
Opportunities in the
116th Congress

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**SOUTHEAST TRIBAL TRANSPORTATION CONFERENCE
2019 FHWA Tribal Transportation Program Workshop
Ketchikan, Alaska
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2019 Tribal Transportation Program (TTP) “shares” Allocation:

In FY 2019, FHWA and BIADOT received an appropriation of **\$495 million** to allocate among Tribes as TTP “shares.” From this appropriation, approximately \$401.394 million was distributed to Tribes as \$392.475 million in TTP “shares” and \$8.919 million in 2% planning funds.

The FY 2019 statutory takedowns for the TTP include:

➤ Oblig. Limit. Deduct.	- \$49.005 million (9.9%)	
➤ BIA/FHWA PRAE	- \$22.299 (5.0%)	: Net deductions, when
➤ Bridge Facilities Grants	- \$13.379 million (3.0%)	: combined with \$49.005 mil.
Safety Fund Grants	- \$ 8.919 million (2.0%)	: Ob. Limit. Deduction, totaled
Planning Funds	- <u>\$ 8.919 million (2.0%)</u>	: \$102.521 mil. for the current
Sub. Tot.	- \$102.521 million	: Fiscal Year.

Indian country has witnessed incremental progress with many on-going challenges

In FY 2011, the former IRR RNDF distributed **\$346.687 mil.** in “shares” to Tribes.

In FY 2019, the TTP “shares” and 2% planning fund total was **\$401.394 mil.**, an increase of \$54.697 mil. over eight years, or just under a 2% annual increase .

Is less than 2% annual growth in TTP funds enough to alter the landscape of transportation infrastructure, transit and road safety needs in Indian country?



Empowering Tribes in the Transportation Arena

Since 2005, the certainty of IRR Program/ TTP Program “tribal shares” using a formula-based program (25 CFR Part 170), the creation of the formula-based Tribal Transit Program at FTA (5311(c)), and the decision by Tribes to assume the Secretary’s duties for transportation and transit under the ISDEAA’s compacts/contracts and FHWA agreements, has allowed Tribes to plan, design and construct transportation improvements, and establish transit systems, at a faster rate to address Tribal infrastructure needs in their communities. However, many challenges remain.



In 2017, however, the most recent report card issued every four years by the American Society of Civil Engineers rated U.S. infrastructure as a “D+” — the same grade as in 2013. ASCE rated other systems:

Roads	D	Transit	D-
Bridges	C+	Waste Water	D+
Energy	D+	Drinking Water	D
Schools	D	Dams	D
Rail	B		

Roads, highways, bridges, ferries, marine ports, and transit systems serving Alaska Natives and American Indians, however, are more rudimentary and 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 record for motor vehicle crash fatalities and pedestrian deaths among AIANs among any group in the country.



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 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.

Whose job is it to educate local, State and Federal officials as to the status of highway and pedestrian safety in Indian country?



Tribal transportation experts and Tribal elected officials acting in their Tribal capacities.

Southeast Tribal Transportation Conference

Likely Contents of a Tribal Title
in the Next Highway Measure
and
The Role of Tribes in the
Legislative Process

The prospects are good for Congress to extend the FAST Act beyond its current expiration on September 30, 2020:

1. Extends the measure beyond the 2020 election
2. Responds to demand by States, governors, mayors, chambers of commerce, unions, and other transportation stakeholders for funding certainty and Federal participation in national infrastructure and transit projects
3. Generates jobs and economic development opportunities
4. President Trump and key Congressional leaders support a robust infrastructure/reauthorization bill.

The challenge remains - how do we pay for it.

Tribal Objectives

1. Build on tribal successes included in existing legislation
2. Establish Tribal unity as a goal for broadly supported legislative proposals
3. Seek out like-minded transportation stakeholders and form coalitions/alliances to elevate your message
4. Meet with Congressional allies
5. Submit specific legislative proposals *now* for inclusion in any infrastructure measure Congress debates this session

Senate Indian Affairs Committee Weighs In with S. 1211

On April 11, eight days after holding an oversight hearing on transportation safety needs in Indian country, Senate Indian Affairs Chairman, John Hoeven (ND), introduced S. 1211 in the Senate, the “Addressing Underdeveloped and Tribally Operated Streets Act,” or “AUTOS Act.”

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116TH CONGRESS
1ST SESSION

S. 1211

To provide for improvements to Tribal transportation facilities and Tribal transportation safety, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 11, 2019

Mr. HOEVEN (for himself, Mr. CRAMER, and Ms. MCSALLY) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To provide for improvements to Tribal transportation facilities and Tribal transportation 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Addressing Under-
5 developed and Tribally Operated Streets Act”.

6 **SEC. 2. DEFINITION OF SECRETARY.**

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

S. 1211

The Senate Indian Affairs Committee is the committee of jurisdiction over Indian affairs in the Senate, but three other committees - the Senate EPW, Banking, and Commerce Committees - are the committees of jurisdiction in the Senate over transportation infrastructure (EPW), transit (Banking) and safety (Commerce). Those committee have not yet introduced legislation this Congress, but soon will.

S. 1211

The AUTOS bill includes a number of important provisions. These provisions:

1. Make it easier for Tribes to use **Categorical Exclusions** for Certain Tribal Transportation Facility projects;
2. Authorize **Programmatic Agreements** between the DOI Secretary and Tribes for Tribal CAT EX decisions and decision-making authority;
3. Amend the **TTP Facilities Bridge Grant Program** in four ways; i) plan and design new bridges; ii) moves the TTP Facilities Bridge Program out of TTP and into the HTF; iii) authorizes a HTF appropriation level of \$16 mil. in FY 2021 with stepped increases of \$2 million to \$24 mil. by FY 2025; and iv) treats the funds as part of the Tribal Transportation Program making award of these bridge funds easier to make to Tribes (using existing award instruments Tribes have in place for the receipt of other TTP funds).

S. 1211

4. Address unmet road maintenance needs under the DOI BIA Road Maintenance Program (TPA);
5. Address the need to improve best practices in Indian country for compiling, analyzing and sharing motor vehicle crash data for crashes occurring on Indian reservations and in Alaska Native communities, and directing BIA to develop a crash report compatible with State DOT crash reports and “upload” such data to BIA IMARS (Incident Management Analysis and Reporting System).
6. Addresses Tribal highway safety needs by doubling the TTP “Safety Fund” grant program from 2% to 4%.

TRIBAL TRANSPORTATION PROPOSALS IN PLAY:

1. Increase Federal appropriations (“plus ups”) for Tribal transportation infrastructure/transit programs using existing statutory funding formulas:
 - a) Tribal Transportation Program (TTP) (23 U.S.C. 202)
 - b) TTP Safety fund program (202(e))
 - c) TTP Bridge funds (202(d))
 - d) Tribal Transit Program (5311(c))

2. Include or increase statutory set-asides for tribes, and lower dollar thresholds and local matches, in authorizations for:
 - a) Highway Safety Improvement projects
 - b) High Risk Rural Roads
 - c) Transportation Alternatives
 - d) BUILD grant program (formerly TIGER grants)

TRIBAL TRANSPORTATION PROPOSALS IN PLAY:

3. Restore a High Priority Projects (HPP) grant program for Tribes.
4. Streamline BIA rights-of-way procedures and digitize BIA LTRO records to expedite reconstruction of BIA System roads and bridges.
5. Successfully implement the Tribal Transportation Self-Governance Program at USDOT and utilize Tribally-supported award instruments that reflect the government-to-government relationship (e.g., FHWA TTP and 202(a)(9) agreements).
6. Improve road safety data collection in Alaska Native communities and reservations by first responders to improve statistics for use by State DOTs and Congressional appropriators.
7. Request “appropriations” for CSC-type expenses in transportation programs

TRIBAL TRANSPORTATION PROPOSALS IN PLAY:

8. What proposals will your Tribe offer to include in any reauthorization bill or infrastructure measure Congress considers?

Key players in the infrastructure financing debate (116th Cong.):

- ✓ White House
- ✓ Transportation Department Secretary Elaine Chao
- ✓ Senate Majority Leader Mitch McConnell (R-KY)
- ✓ Speaker of the House Nancy Pelosi (D-CA)
- ✓ Senate EPW Chairman John Barrasso (R-WY)
- ✓ Senate Commerce, Science and Transportation Committee Chairman, John Thune (R-SD)
- ✓ Senate Committee on Banking, Housing and Urban Affairs Committee Chairman Mike Crapo (R-ID)
- ✓ Senate Appropriations Subcommittee Chairwoman Lisa Murkowski (R-AK)
- ✓ Senate Finance Committee Chairman Chuck Grassley (R-IA)
- ✓ Senate Indian Affairs Committee Chairman Hoeven (R-ND)
- ✓ House Transportation and Infrastructure Committee Chairman Pete DeFazio (D-OR)
- ✓ House Ways and Means Committee Chairman Richard Neal (D-MA)

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