

The Senate recently passed HR. 22, a 1034 page six-year surface transportation reauthorization bill that would provide three years of funding. We have analyzed the bill as passed by the Senate, and now report on certain provisions affecting tribal transportation programs.

TTP Funding:

Under Sec. 11001, the bill would provide increased funding for the Tribal Transportation Program (TTP) of \$465 million for FY 2016 (a \$15 million increase above the MAP-21 enacted level of \$450 million), with stepped increases of \$10 million each year through FY 2021 (ending at \$515 million). This initial FY 2016 level is \$5 million above the \$460 million figure included when the DRIVE Act was originally made public.

Administrative Costs:

Sec. 11024 would reduce the BIA/FHWA administrative expense allowance to five percent from the current six percent allowed under section 202(a)(6) of title 23, United States Code.

Tribal Transportation Bridge Program:

Sec. 11024 would also increase the funding “takedown” for the Tribal Transportation Facility Bridge Program from two percent to three percent.

Tribal Transit Funding:

The bill would not increase funding for the Tribal Transit Program. Sec. 21008 provides \$5 million for discretionary grants and \$25 million for formula grants under the Tribal Transit Program. This section would also establish a default rule for allocating formula funding between tribes where more than one tribe provides public transportation services on tribal lands within a single Tribal Statistical Area.

Transfer of Funds from States to Tribes:

Sec. 34102 would amend 402(c)(2) and 405(a)(1) of title 23, United States Code, to allow a State to provide Highway Safety Improvement Program and National Priority Safety Program funds to political subdivisions “including Indian tribal governments.”

Access to New Federal Grant Programs:

Sec. 11025 would establish a “nationally significant Federal lands and tribal projects program.” This section would authorize \$150 million per year for FY 2016 through 2021 for grants for projects having an estimated cost equal to or exceeding \$25 million, with a preference for projects costing more than \$50 million. Tribes would be eligible recipients of such grants.

Sec. 12203 would establish a Grant program to reward entities, including Indian tribes, for the implementation of policies and procedures that support performance-based management of the surface transportation system and improve transportation outcomes; or use innovative technologies and practices that improve the efficiency and performance of the surface transportation system. The grants would for up to \$15 million, and a total of \$150 million would be authorized for the program.

Sec. 44002 would establish a grant program for assistance for major projects. Under this program, States and other entities, including tribes and tribal consortia, would be eligible for grants of at least \$50 million. However, to be eligible, project costs would need to exceed the lesser of \$350,000,000 or an established percentage of the total Federal-aid highway funds apportioned to the State in which the project would be located, depending on that State's rural status and whether the project would span more than one State.

Tribal Data Collection:

Sec. 12101 would amend 201(c)(6) of title 23, United States Code, to require each entity carrying out a project under the TTP to provide a yearly report of the names, descriptions, and current status of projects or activities carried out by the entity under the TTP, as well as an estimate of the number of jobs created and/or retained by the TTP project or activity.

Regional Infrastructure Accelerator Demonstration Program:

Sec. 12203 would establish a demonstration program to provide \$12 million in initial grants and administrative costs for regional infrastructure accelerators, which are intended to build the capacity of State, local, and tribal governments to evaluate and structure projects involving the investment of private capital.

Infrastructure Permitting Improvement Center:

Sec. 31102 would establish an Interagency Infrastructure Permitting Improvement Center to support process improvements in the permitting and review of infrastructure projects – including surface transportation projects – across a wide swath of federal responsibilities. The Center is required to meet with tribal representatives at least annually.

In addition, media sources reporting on the passage of the DRIVE Act have stated that HR 22 was amended before passage to include provisions of the TIRES Act (S. 1776) passed out of the Senate Committee on Indian Affairs on July 22, 2015. These provisions were reported to include NEPA exemptions for tribal projects. However, in our review of the bill, we have not located any such provisions of the TIRES Act within the DRIVE Act, as amended and passed, except for the reduction in the administrative fee. The bill does not appear to include any provisions related to categorical exclusions for tribal projects, streamlining of projects within existing rights-of-way, the option to assume NEPA approval authority, or tribal transportation safety data

reporting. The TTP funding levels within the DRIVE Act are also lower than those included within the TIRES Act.

As this process moves back to the House of Representatives, it is imperative that tribes maintain pressure on key members of Congress and their delegations to ensure that the House bill builds on the progress made in the Senate. We will continue to advocate with members and their staff throughout the August Congressional recess and push for the inclusion of tribal priorities within the House version.

Thank you for your continued efforts on behalf of tribal transportation. We would be happy to answer any questions you may have about this bill.