

**SUMMARY OF THE  
TRIBAL TRANSPORTATION UNITY CAUCUS (TTUC)  
DISCUSSION DRAFT BILL  
“JOHN P. SMITH TRIBAL ROAD SAFETY AND TRANSPORTATION  
INFRASTRUCTURE INVESTMENT ACT OF 2017”**

November 3, 2017

The Tribal Transportation Unity Caucus (TTUC) is an affiliation of Indian tribes and Alaska Native Villages interested in advancing a consensus tribal transportation infrastructure measure to be considered by Congress and the Trump Administration in any national infrastructure measure the White House or Congress may introduce in the 115<sup>th</sup> Congress. The TTUC draft is *not* intended as a successor surface transportation measure to the FAST Act, but as a supplement to it to be added to national legislation to accelerate the construction of tribal transportation systems, improve tribal transit and make roadways safer for American Indians and Alaska Natives (AIANs) and all users of *tribal transportation facilities*.

The TTUC discussion draft bill is proposed in anticipation of a one trillion-dollar national infrastructure measure, or any alternative proposal. Congress must still identify the “pay-for” for so large an investment. The goal of the TTUC discussion draft is to: (1) highlight the great unmet need for infrastructure development and improved highway and pedestrian safety in Indian Country; (2) facilitate debate concerning tribal transportation infrastructure requirements; and (3) offer consensus legislative proposals. Tribes, like states and local governments, are *public authorities*. Far too often, tribes cannot finance road, bridge transit or safety improvement projects due to lack of resources, both public and private.

Infrastructure development is the key to building community stability which is the foundation for economic development. For economic development to be possible on Indian reservations and in Alaska Native Villages, there must be electricity, telecommunication systems, water and waste water systems, public safety services (police, fire, EMTs), schools, health and community centers, Tribal courts, *and the roads and transit systems* to link tribal services and programs with the American Indians and Alaska Natives who rely on them.

The TTUC draft bill, the “**John P. Smith Tribal Road Safety and Transportation Infrastructure Investment Act of 2017**” is named in memory of the late John P. “Big John” Smith, the Director of the Eastern Shoshone and Northern Arapaho Tribal Transportation Department for 27 years, Executive Director of the Inter-Tribal Transportation Association (ITA), Tribal Transportation Program Coordinating Committee (TTPCC) Tribal Chairman, and a friend to countless tribal, state and federal transportation and elected officials and tribal advocates. The TTUC discussion draft was endorsed by NCAI at its 74<sup>th</sup> Annual Convention (October 16-20, 2017) as [NCAI resolution \(MKE-17-33\)](#).

The TTUC discussion draft incorporates and expands upon Wyoming Senator John Barrasso’s “John P. Smith Act,” S. 302, an act to improve highway safety on Indian reservations and in Alaska Native Villages by streamlining the process for categorical exclusions under NEPA. Senator Barrasso introduced S. 302 in February 2017 to honor the memory and legacy of Big John and his tireless advocacy to improve highway and pedestrian safety on the Wind River Reservation and throughout Indian country.

The John P. Smith Tribal Road Safety and Transportation Infrastructure Investment Act supplements or increases annual appropriations for road and bridge construction and reconstruction, tribal transit, and highway safety projects for tribes which are currently authorized under the FAST Act, Pub. L. 114-94, to address the deplorable state of tribal transportation facilities, and the unacceptably high rates of motor vehicle and pedestrian fatalities and injuries suffered by American Indians and Alaska Natives (AIANs), streamlines environmental clearances, improves the Bureau of Indian Affairs’ (BIA’s) right-of-way

recordkeeping for public tribal transportation facilities, and encourages innovation in tribal transportation infrastructure initiatives.

Senator Barrasso got it right when he remarked earlier this year during the markup of S. 302 that:

*“Big John knew that working together, we could make real improvements to road safety and save lives.”*

Tribal transportation advocates seek greater parity between Indian tribes and local and State transportation stakeholders and governments, so that tribal governments have the capacity, resources and personnel to work in partnership with other public authorities on transportation and highway safety projects of mutual interest. The TTUC plans to convene a national meeting of tribal leaders and tribal transportation officials in Phoenix, Arizona January 17-18, 2018 to review, amend, supplement and endorse the TTUC consensus proposal. The current discussion draft advances tribal transportation infrastructure needs in the following manner:

**Funding** (*tribal proposed funding levels in the TTUC discussion draft may change based on the content and duration of a national infrastructure proposal put forward by the Administration or Congress*)

1. **Tribal Transportation Program (TTP)**

- a) **Roads** – Beginning in FY 2018, appropriating \$500 million for the Tribal Transportation Program, with stepped increase of \$10 million annually until the program reaches \$590 million in 2027, out of the Highway Trust Fund (other than the Mass Transit Account). *See* § 401(a);
- b) **TTP Facility Bridges** – Appropriating \$75 million for the Tribal Transportation Facility Bridge Program, out of the Highway Trust Fund (other than the Mass Transit Account), for each fiscal year 2018 through 2027. *See* § 401(b).

2. **Tribal Transit Program** – Amends the Tribal Transit Program:

- a) for the discretionary tribal transit grant program (Sec. 5311(c)(1)(A)), to increase discretionary tribal transit grants to \$20 million in FY 2018, with stepped increases of \$5 million annually through FY 2027, and addressing significant shortfalls in funding for many Tribal Transit Program formula recipients by requiring the Secretary of Transportation, before distributing competitive tribal transit grants, to ensure that tribal formula grant recipients under the FAST Act receive *not less than* their highest competitive grant of Tribal Transit Program funds made between FY 2006 and FY 2012 (SAFETEA-LU), with the remainder of available 5311(c)(1)(A) funds being available for competitive Tribal Transit Program grants. *See* § 402(a)(1)(i) and (ii);
- b) for the formula tribal transit grant program (Sec. 5311(c)(1)(B)), to increase grants to \$45 million in FY 2018, with stepped increases of \$5 million annually through FY 2027. *See* § 402(a)(2).

3. **National Tribal Asset Management Program** – Establishes a national tribal asset management program to provide support for the condition and performance of tribal transportation facilities and ensure that the investment of federal and tribal funds achieve performance targets consistent with the National Highway Performance Program, and authorizes an appropriation from the HTF \$50 million

for FY 2018, with stepped increases of \$5 million per year, increasing to \$75 million for fiscal years 2023 through 2027. *See* § 302.

4. Tribal Set-Aside for Highway Safety Improvement Program (HSIP) Grants – Creates a 2 percent set-aside for Indian tribes from the national HSIP to augment the section 202(e) Tribal Transportation Program Safety Funds (TTPSF) discretionary grant program; allows 202(e) grants to be used for educational purposes and for the purchase of equipment; names the grants the “**John P. Smith Tribal Transportation Program Safety Grants**,” and distributes all such funds as competitive safety grants administered by the Federal Highway Administration under the 202(e) program. *See* § 110(a) and (d).
5. BIA Indian Highway Safety Program – Increases the current 2 percent set-aside to 3 ½ percent for the Bureau of Indian Affairs’ “Indian Highway Safety Program” funded through NHTSA. *See* § 110(b).
6. Surface Transportation Block Grant Program, STP Set-Aside – Creates a 3 percent set-aside, within the Surface Transportation Program (STP) set-aside, for competitive grants to Indian tribes for “transportation alternative” projects or activities (as defined prior to enactment of the FAST Act) to improve pedestrian and motorist safety in Indian Country, where fatalities and serious injuries far exceed the National average by sometimes four-six times above the national average. *See* § 110(c).
7. Nationally Significant Federal Lands and Tribal Projects Program – Amends the “Nationally Significant Federal Lands and Tribal Projects Program” (sec. 1123 of the FAST Act), to lower the dollar threshold for an eligible tribal transportation project to \$3.0 million (from \$25 million) and to prioritize tribal transportation projects equal to or greater than \$5.0 million (from \$50 million), and further amends the section by authorizing an appropriation of \$100 million for each fiscal years 2018 through 2027 for the Program from the Highway Trust Fund (other than the Mass Transit Account), rather than requiring appropriations from the U.S. Treasury. *See* § 403.
8. Tribal High Priority Projects Program – Amends 23 U.S.C. § 202 to reestablish and improve upon the “Tribal High Priority Projects Program,” as created under section 1123 of MAP-21, Pub. L. 112-141, with an authorization of \$35 million for FY 2018 and 2019, increasing by \$5 million per year to \$50 million for FY 2024 through FY 2027, to permit any Indian tribe to finance its highest priority project (up to \$3.0 million) and for emergency and disaster relief. *See* § 404.

### **Streamlines Environmental Clearances and Facilitates the Transfer of Funds to Tribes**

9. John P. Smith Tribal Road Safety Program – Incorporates and amends S. 302, Senator Barrasso’s “John P. Smith Act,” which directs the Secretary of the Interior, by regulation, to define the parameters for a “tribal transportation safety project” that is categorically excluded (CE) under the National Environmental Protection Act (NEPA) and be expeditiously processed by federal agencies, directs the Secretary of the Interior and the Secretary of Transportation to enter into programmatic agreements with Indian tribes to assume the responsibility for making environmental determinations, clarifies that programmatic agreements include Pub. L. 93-638 contracts and compacts, the USDOT self-governance compact, other title 23 agreements, and does not waive or require the waiver of a tribe’s sovereign immunity. *See* §§ 101 – 104.
10. Facilitating the Transfer of Federal Funds to Tribes – Amends Chapter 2 of title 23 to expand the federal transportation programs and funds available to Indian tribes that can be obligated to tribal award instruments, makes Indian tribes eligible, as direct recipients, for discretionary and competitive grants made available to the States or their political subdivisions in the same manner and under the

same criteria, and permits the Secretary of Transportation to reduce matching requirements for Indian tribes. *See* § 202.

### **Innovating Tribal Transportation Infrastructure Initiatives**

11. **Tribal Infrastructure Bank** – Establishes a tribal infrastructure bank program, similar to State infrastructure bank program (23 U.S.C. § 610), and authorizes an appropriation of \$20 million for each fiscal year 2018 through 2027, for making loans and other forms of credit assistance to tribes for tribal highway and transit projects. *See* § 301.

### **Rights-of-Way Over Indian Lands**

12. **Improving Recordkeeping Requirements for Tribal Transportation Facility Right-of-Way Over Indian Lands** – Incorporates a discussion draft bill by New Mexico Congressman Ben Ray Lujan to require the Interior Department, upon the request of a tribe, to provide documentation of valid right-of-way for existing BIA System and tribally-owned facilities eligible for inclusion on the National Tribal Transportation Facility Inventory (NTTFI), and to authorize the Secretary, or a tribe, where no such documentation exists in a Land Title Records Office or other records office, to acquire valid right-of-way for such routes from authorized appropriations of \$10 million for each fiscal year 2018 through 2027, and to further direct the BIA to computerize and maintain such right-of-way records using commonly used mapping techniques and to make such records available to the public. *See* § 201.

The measure also codifies into federal law BIA regulations (25 CFR 169.4(b)) that make clear that an Indian tribe, administering a public project that crosses Indian lands owned entirely by the tribe, need not obtain a right-of-way and further directing the Interior Secretary to record a tribal government’s dedication of such tribal land for a public purpose in the Secretary’s database. *See* § 201(c).

### **Improves Data Collection**

13. **Compile Deferred Maintenance Reports (DMR) of BIA System and Tribally-Owned Public Routes** – Directs the Secretary of the Interior, in consultation with Transportation Secretary and tribes, to develop a Deferred Maintenance Report (DMR), and uniform criteria, to evaluate the condition and Level of Service (LOS) (a rating regime between “excellent” and “failing”) of BIA System *and* Tribally-owned facilities in the NTTFI and National Bridge Inventory (NBI) (no data is currently obtained and regularly reported to Congress concerning the condition of Tribally-owned public roads and unmet road maintenance repair costs, including Tribally-owned school bus routes); requires the Secretary to estimate the total annual DM cost and report such information to Congress annually (*see* § 111(a)(1) and (2)); and
14. **Share Best Practices of Data Sharing** – Directs the Secretary of Transportation, in consultation with the Secretary of the Interior and tribes, to report to Congress on best practices between State departments of transportation and Indian tribes and Alaska Native Villages concerning the compilation, analysis and sharing of motor vehicle crash data on Indian reservations and in Indian communities that improve the quality and quantity of available crash data in Indian Country. *See* § 111(a)(3).