



## MEMORANDUM

May 13, 2014

To: Tribal Transportation Clients

From: HOBBS, STRAUS, DEAN & WALKER, LLP

*Geoff Strommer* (by TAE)

Re: ***Tribal Transportation Developments***

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In this memorandum we report on the MAP-21 reauthorization proposal released by the Senate Committee on Environment and Public Works (EPW).

The EPW Committee, chaired by Senator Barbara Boxer (D-CA), released the legislative text of its MAP-21 Reauthorization bill late last night, and the Committee plans to mark up the bill on Thursday (May 15) at 9:30 am. Unlike MAP-21, which reauthorized programs for only a two-year period, the EPW bill would reauthorize highway programs for a six-year period, from FY 2015 through FY 2020.

Despite the efforts of tribes to work with EPW, from a tribal perspective the Committee's proposal is dismal. While the Committee's bill summary touts increased funding for "existing core transportation formula programs to provide States and local governments with a strong federal partner," the bill would provide the current level of funding (\$450 million) for the Tribal Transportation Program (TTP) for each of the six years. The Committee declined to include even the modest increases to the TTP included in the President's reauthorization proposal released by the Department of Transportation (DOT) on April 29, 2014.<sup>1</sup> By holding TTP funding flat at the 2009 level for the entire six-year period, the EPW proposal would leave the TTP without any funding increase for eleven years. Whether intentional or not, the Committee appears to be sending the message that it is not concerned about providing tribal governments with a strong federal partner.

The EPW Committee did not propose any administrative changes to the TTP. Significantly, EPW failed to include the provision from the President's proposal to reestablish a Highway Trust Fund allocation for the Tribal High Priority Project (HPP) program. Under MAP-21, the HPP program originally established through the 2004

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<sup>1</sup> As we reported in our May 9, 2014 memorandum, the DOT proposal would increase funding for the TTP from the current level of \$450 million per year to \$507,000,000 for fiscal year 2015; \$517,000,000 for fiscal year 2016; \$527,000,000 for fiscal year 2017; and \$538,000,000 for fiscal year 2018.

negotiated rulemaking process was eliminated. A new tribal HPP program was established, which was the same as the regulatory program with one crucial difference: whereas the regulatory program was funded through an allocation of funds from the Highway Trust Fund, the new program must be funded through a separate appropriation, and the program has not received any appropriations under MAP-21. As discussed below, tribes have advocated for restoration of the Trust Fund allocation for the HPP as a priority objective in this reauthorization.

This year representatives from Indian country have been working in both the Senate and the House to build support for tribal transportation legislation to increase funding, provide tribes with greater access to national programs, and enhance the ability of tribes to administer transportation programs serving their communities. The National Congress of American Indians, the Intertribal Transportation Association and the newly-formed Tribal Transportation Unity Caucus have linked tribes and tribal organizations in an effort to develop and promote the “Tribal Transportation Unity Act” (TTUA), a proposal for comprehensive tribal transportation legislation that was distributed to key transportation and infrastructure committees in the Congress, including the EPW Committee. The legislative proposals in the TTUA include a significant increase in funding for the TTP and other tribal programs. The TTUA also proposed to establish or increase tribal set-asides in the following national programs: the Highway Safety Improvement Program, the National Highway Traffic Safety Administration program, and the Transportation Alternatives Program. In addition the TTUA includes a number of administrative provisions to facilitate tribal administration of their programs, such as the creation of a Tribal Self-Governance Program under DOT, provisions to facilitate the transfer of Federal Aid funds for tribal transportation projects, and provisions to ensure tribal eligibility for all DOT discretionary and competitive grant programs.

In a meeting with tribal representatives earlier this year, staff for the EPW Committee reportedly indicated that the Committee did not plan to entertain any new funding for the Tribal Transportation Program, but they did indicate that the Committee would consider non-funding proposals. Unfortunately, none of the tribal proposals in the TTUA are included in the EPW proposal. In fact, other than the flat-lined authorization of the Trust Fund allocation for the TTP, tribal governments are mentioned only with respect to two provisions in the EPW bill. Tribes are identified as eligible applicants for two new competitive grant programs to fund high-cost projects: Projects of National or Regional Significance (to fund projects with costs estimated at \$350 million or more) and American Transportation Awards.

After the EPW Committee mark up on Thursday, attention will shift to the Senate Committees with jurisdiction over safety and transit titles of the bill, and to the House Transportation and Infrastructure (T&I) Committee, where tribal proposals have fared better in recent years. Although the T&I Committee’s bill to reauthorize the previous transportation bill (known as SAFETEA-LU) was never voted on by the full House, the Committee adopted a number of amendments advocated by tribes to improve administration of the TTP. We understand that Committee members may consider many of these same provisions, which are also included in the TTUA. In particular, the

proposal to establish a DOT Self-Governance Program enjoyed bipartisan support in the House two years ago, and the Ranking Member of the T&I Committee, Nick Rahall (D-WV), who offered the proposal then, has indicated interest in working with Committee Chairman Shuster (R-PA) to adopt it once again.

***Conclusion***

If you would like more information about any of the issues discussed in this memorandum, please contact Geoff Strommer ([gstrommer@hobbsstrauss.com](mailto:gstrommer@hobbsstrauss.com) or 503-242-1745), Michael Willis ([mwillis@hobbsstrauss.com](mailto:mwillis@hobbsstrauss.com) or 202-822-8282), Tim Seward ([tseward@hobbsstrauss.com](mailto:tseward@hobbsstrauss.com) or 916-442-9444), or Steve Osborne ([sosborne@hobbsstrauss.com](mailto:sosborne@hobbsstrauss.com) or 503-242-1745).