



MEMORANDUM

April 30, 2010

TO: SELF GOVERNANCE TRIBES
FR: HOBBS, STRAUS, DEAN & WALKER, LLP
RE: *Surface Transportation Authorization Progress*

On March 18, 2010, the President signed the HIRE Act,¹ which, among other provisions, extended SAFETEA-LU at FY 2009 funding levels through December 31, 2010. The Indian Reservation Roads Program and the Tribal Transit Program, both contained in SAFETEA-LU, were reauthorized for \$562.5 million and \$18.75 million, respectively. This most recent extension has given lawmakers leeway to continue work on the draft language of a new surface transportation authorization bill. Recent activity includes several House and Senate Committee hearings dedicated to examining specific aspects of surface transportation like energy usage, safety and funding. House and Senate Committee offices have indicated differing timetables for authorization language to move forward. The Senate Committee on Indian Affairs (SCIA) has been delaying hearings due to tribal discord regarding funding formula issues purposely left out of the Transportation Reauthorization of Indian Programs (TRIP Act), a discussion draft released last year that contains tribal specific provisions meant to be included in the larger surface transportation authorization bill.

On March 24, 2010, the Senate Committee on Environment and Public Works held a full committee hearing to examine opportunities to improve energy security and the environment through transportation policy. Senator Boxer (D-CA) and John Pocari, the Deputy Secretary of Transportation at the Department of Transportation (DOT) both expressed support for the popular multimodal, discretionary Transportation Investment Generating Economic Recovery (TIGER) grant program that was included in the Recovery Act and indicated it should have a place in the new surface transportation authorization legislation. (Tribes are eligible recipients of TIGER funds.) However, neither Senator Boxer nor Deputy Secretary Pocari discussed a specific amount of funds that would be authorized for this program.

On April 14, 2010, the Senate Committee on Environment and Public Works (EPW) held a Full Committee hearing to examine opportunities to reduce injuries and fatalities associated with the nation's highways by addressing a number of transportation safety issues including distracted driving and texting, drunk driving, safety concerns impacting children and the elderly, and various infrastructure improvements such as signage.

¹ Hiring Incentives to Restore Employment Act, HR 2847, Pub. L. No. 111-147.

Notably, in his opening statement before the committee, Deputy Secretary John Pocari took time to mention that one of the DOT's goals was to improve the safety of tribal and rural roads. He went on to explain that rural roads have a disproportionately high rate of accidents and highlighted the importance of having accurate data on the exact location and reason for accidents – a way for the Department to pinpoint and fix specific problem areas. He also reinforced the need for tribal and rural roads to be included in a meaningful way in each state's Strategic Highway Safety Plan.

Deb Hubsmith, the Director of Safe Routes to School National Partnership, a SAFETEA-LU program under which tribes are eligible to receive grant money, discussed the importance of increasing money to that account due to high demand. She also expressed support for the idea of setting location and mode-specific safety goals on a state-by-state basis, noting that some states had concerns that needed to be addressed with rural roads while other states had more public transit-related safety issues to address.

On April 14, 2010, the House Committee on Transportation and Infrastructure held a Subcommittee on Highways and Transit hearing to receive testimony on innovative financing practices in surface transportation project delivery. Witnesses cited the problems many state and local entities have securing financing for projects in a timely manner and the complications that ensue when they try to fund projects through public-private partnerships – a combination of federal grants and private investment. In its current form, the House's draft version of authorization, the Surface Transportation Authorization Act of 2009 (STAA), contains various provisions that expand and clarify the use of innovative financing for highway and transit projects. While tribes received some assistance with infrastructure financing in the Recovery Act and the HIRE Act in the form of federally subsidized bond authority, much more work needs to be done if tribes are to obtain a modicum of financing parity with state and local governments.

Regarding the progress of authorization, House and Senate Committee and Subcommittee staff acknowledge that some work had been done and that the process was "ongoing"; however, House and Senate Committee staff persons differed in the dates they predicted for the legislation to move out of committee.

A House Transportation and Infrastructure Committee staff person cited the combination of the SAFETEA-LU extension buying members time and the pressure to move other large legislative priorities forward as factors that had dampened the urgency to move forward quickly on the STAA, despite Transportation and Infrastructure Chairman Oberstar's desire to do so. The staff person speculated that work on the STAA would be pushed into either a lame duck session after the November elections or, in what he described as the most likely scenario, the next Congress.

The Senate's version of surface transportation authorization, often referred to as "Moving Ahead for Progress in the 21st Century (MAP 21)," has not been fully drafted and Committee members are still deciding the legislation's structure and provisions. A Senate Committee on Environment and Public Works staff person cited a more aggressive time table than the House Committee and stated that pressure was building to get a draft marked up and out of committee by either summer or fall. She noted that the Indian Reservation Roads program (among others)

was under the Committee's jurisdiction and that while they were considering input from the Committee on Indian Affairs, Environment and Public Works Committee Chair Boxer (D-CA) wanted to move forward in a timely manner. It should be noted that Senator Boxer is up for re-election in November and faces a potentially close race.

With respect to the tribal provisions of the transportation authorization, little has happened over the past year. A year ago, the Senate Committee on Indian Affairs (SCIA) sent a Dear Tribal Leader Letter requesting comments regarding the draft release of the Transportation Reauthorization of Indian Programs (TRIP Act). The SCIA noted that it received comments from 85 tribes and tribal organizations on its discussion draft, which includes the following provisions:

- increased funding for the Indian Reservation Roads, Indian Reservation Roads Bridge and the Tribal Transit Grant Programs;
- significant funding for new tribal safety programs;
- new mechanisms to establish direct DOT funding to tribes; and
- extension of the Indian Self-Determination and Education Assistance Act (ISDEAA) to the DOT.

The draft did not address controversial provisions such as the IRR funding formula and road inventory issues. These issues were deliberately avoided in order to give tribes the opportunity to resolve differences before the legislation was voted out of Committee and sent to the Environment and Public Works Committee for inclusion in the STAA.

Given timing issues associated with the reauthorization package as a whole and tribal discord regarding the IRR funding formula, the SCIA has no plan to schedule a hearing in the next couple months. SCIA staff indicated that the Committee's request for comments on the draft TRIP language is still open and the Committee would like to advance tribal provisions supported by a consensus from Indian Country. The SCIA is considering the possibility of holding a hearing in the summer or fall of this year.

Conclusion

If you have any questions about this memorandum, please contact Geoff Strommer (gstrommer@hobbsstrauss.com) or Steve Osborne (sosborne@hobbsstrauss.com). Both can be reached at 503-242-1745.