



# Self-Governance Communication & Education Tribal Consortium

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April 19, 2017

The Honorable Sam Graves  
Chairman  
House Subcommittee on Highways and Transit  
U.S. House of Representatives  
2165 Rayburn House Office Building  
Washington, DC 20515  
ATTN: Murphie Barrett, Staff Director

The Honorable Eleanor Holmes Norton  
Ranking Minority  
House Subcommittee on Highways and Transit  
U.S. House of Representatives  
2165 Rayburn House Office Building  
Washington, DC 20515  
ATTN: Helena Zyblikewyck, Staff Director

Re: Hearing on “FAST Act Implementation: State and Local Perspectives”

Dear Chairman Graves and Ranking Member Norton:

On behalf of the Self-Governance Communication and Education Tribal Consortium (SGCETC), I am submitting this letter to the Subcommittee on Highways and Transit for the hearing held on April 5, 2017, “FAST Act Implementation: State and Local Perspectives” to be included in the record.

Included in the FAST Act is Section 1121, the Tribal Transportation Self-Governance Program (TTSGP). The Secretary of the Department of Transportation (DOT) has been authorized to establish a negotiated rulemaking committee that provides Tribes an opportunity to participate in shaping the TTSGP's implementing regulations. However, Tribes have not been not afforded the opportunity to provide their perspectives on the FAST Act implementation and the impending regulations that would guide the TTSGP implementation in recent months. **We seek your support to encourage DOT to resume the negotiated rulemaking process and allow Tribes to begin the business of developing viable transit modes, building bridges to connect rural locations to the rest of America and creating strong reservation economies.**

The statute is very clear about the timing of the negotiated rulemaking process but unfortunately the process has not kept pace with the statute, which will surely only serve to delay implementation:

*‘(A) PROMULGATION.—Not later than 90 days after the date of enactment of the FAST Act, the Secretary shall initiate procedures under subchapter III of chapter 5 of title 5 to negotiate and promulgate such regulations as are necessary to carry out this section. **The statute was enacted December 4, 2015 but DOT did not initiate the process to establish and Negotiated Rulemaking Committee (“Committee”) until April 25, 2016, more than 120 days following enactment. Later, the first meeting of the Committee was convened August 16-18, 2016.***

*“(B) PUBLICATION OF PROPOSED REGULATIONS.—Proposed regulations to implement this section shall be published in the Federal Register by the Secretary not later than 21 months after such date of enactment. **The Committee has only hosted five meetings to date. It has not completed its work and has no current plans to meet to finish. While the impending deadline to complete the Final Rule by August 2017 is increasingly unlikely.***

*“(C) EXPIRATION OF AUTHORITY.—The authority to promulgate regulations under subparagraph (A) shall expire 30 months after such date of enactment. **The expiration date is June 2018.***

*“(D) EXTENSION OF DEADLINES.—A deadline set forth in subparagraph (B) or (C) may be extended up to 180 days if the negotiated rulemaking committee referred to in paragraph (2) concludes that the committee cannot meet the deadline and the Secretary so notifies the appropriate committees of Congress. **The extension would expire December 2018.***

While it is not clear how the Subcommittee selected witnesses to testify at this hearing, one thing is certain that without regulations the TTSGP will not be implemented and Tribes will not be among the primary decision-making partners in this process. We will not be able to have the opportunity to explore nor the ability to succeed under other Self-Governance authorities that can complement Section 1121 in the FAST Act.

Tribes are sovereign nations with inherent authority to govern and protect the health, safety, and welfare of Tribal citizens within Tribal lands and territories. Self-Governance allows Tribes maximum flexibility to use and redesign Federal dollars associated with assumed programs, services, functions, or activities (or portions thereof) (PSFAs) to meet local community service needs and Tribally-driven priorities. This authority established a unique legal and political relationship between Tribes and the Federal government. In 1975, Congress enacted the Indian Self-Determination and Education Assistance Act (ISDEAA) to establish a legal framework for Tribes to exercise their inherent right to govern and to protect Tribal citizens, lands, and resources. In 1988, Congress first amended ISDEAA to allow Tribes to assume responsibility for administering programs, services, functions, or activities (PSFAs) that were previously managed by the Department of the Interior (DOI) through the Self-Governance demonstration project. The law was amended again in 1994 and 2000 to expand and permanently authorize the program to the Indian Health Service (IHS). It is because of the success of Self-Governance that Congress once again decided it was a positive and progressive act to extend Self-Governance to all programs available to Tribes within the DOT (e.g., allow Tribes to include Tribal Transit Program (TTP) funding, transit funding, discretionary grant funds, and Federal-aid funds transferred by a state agency in their funding agreements).

Further delays in the negotiated rulemaking process compromises the ability of Tribes to meaningfully participate in proceedings such as the Subcommittee’s hearing on April 5<sup>th</sup> which translates to delayed opportunities for Tribes to share their perspectives with Congress on implementing the FAST Act, specifically under Section 1121.

Mr. Chairman, Madam Ranking Member and Members of the Subcommittee, we are in need of your immediate assistance to ensure that Tribes, valued and qualified stakeholders, are allowed to participate in the dialogue that will shape and guide the implementation of the FAST Act for all beneficiaries.

Thank you.

Sincerely,



W. Ron Allen, Tribal Chairman/CEO  
Jamestown S'Klallam Tribe  
President of the Board, SGCETC

CC: The Honorable Kay Rhoads, Tribal Co-Chair, DOT-TTSGP Negotiated Rulemaking  
Committee  
The Honorable Joe Garcia, Head Councilman, Ohkay Owingeh Pueblo, Tribal Co-Chair,  
DOT-TTSGP Negotiated Rulemaking Committee  
Self-Governance Tribes