

Surface Transportation Reauthorization Bill Analysis



Program	Currently Enacted:	H.R. 2: INVEST in America Act	S. 2302: America's Transportation Infrastructure Act	Notes/Comments
Office of Tribal Government Affairs	N/A	H.R. 2 would establish an Assistant Secretary for Tribal Government Affairs and an Office of Tribal Government Affairs at the U.S. Department of Transportation.	S. 2302 would establish an Assistant Secretary for Tribal Government Affairs and an Office of Tribal Government Affairs at the U.S. Department of Transportation.	
<p>Tribal Transportation Program (TTP)</p> <p>TTP is the largest program in the Office of Federal Lands Highway at the U.S. Department of the Interior (USDOT). The TTP program is funded by contract authority from the Highway Trust Fund and is currently subject to the overall Federal-aid obligation limitation.</p>	<p>\$465,000,000 for fiscal year 2016 \$475,000,000 for fiscal year 2017 \$485,000,000 for fiscal year 2018 \$495,000,000 for fiscal year 2019 \$505,000,000 for fiscal year 2020</p> <p>Total: \$2,425,000,000</p>	<p>\$672,481,814 for fiscal year 2021 \$800,000,000 for fiscal year 2022 \$800,000,000 for fiscal year 2023 \$800,000,000 for fiscal year 2024 \$800,000,000 for fiscal year 2025</p> <p>Total: \$3,872,481,814</p>	<p>\$565,000,000 for fiscal year 2021 \$580,000,000 for fiscal year 2022 \$595,000,000 for fiscal year 2023 \$610,000,000 for fiscal year 2024 \$625,000,000 for fiscal year 2025</p> <p>Total: \$2,975,000,000</p>	<p>Under the FAST Act, increases were \$10 million each year for five years.</p> <p>S. 2302 would increase TTP funding by \$60 million in its first year, with \$15 million increases each year for five years.</p> <p>H.R. 2 would increase TTP funding by 167.4 million in FY 2021, then increase an additional \$127.5 million in FY 2022. From FY 2022 to FY 2025, the funding would remain level.</p> <p>Beginning in FY 2022, \$50 million of the funding for TTP is set aside for the Tribal High Priority Projects program. As a result, the availability of TTP funding is more realistically thought of as \$750 million for FY 2022-2025 for comparison to current enacted amounts.</p> <p>Even with the above new amount proposed to be set aside in H.R. 2 and the new funding source for the bridge program in S. 2302, funding is greater in H.R. 2 than S. 2302 for TTP.</p>

Surface Transportation Reauthorization Bill Analysis



Program	Currently Enacted:	H.R. 2: INVEST in America Act	S. 2302: America's Transportation Infrastructure Act	Notes/Comments
<p>Tribal Transportation Facility Bridge Set Aside</p> <p>Under FAST Act, up to 3% of TTP funds are available each year for improving deficient bridges. Federally recognized Indian tribes may submit an application at any time for eligible tribal transportation bridges for planning, design, engineering, preconstruction, construction, and inspection, or to replace, rehabilitate, seismically retrofit, or paint. Funds may also be used for anti-icing, de-icing, or to implement countermeasures (including multiple-pipe culverts). To be eligible, a bridge must have an opening of at least 20 feet, be classified as a tribal transportation facility, and be structurally deficient or functionally obsolete.</p>	<p>3% of TTP funds made available for each fiscal year. For fiscal year 2020, the set-aside amount would be \$15.15 million.</p> <p>\$13,950,000 for fiscal year 2021 \$14,250,000 for fiscal year 2022 \$14,550,000 for fiscal year 2023 \$14,850,000 for fiscal year 2024 \$15,150,000 for fiscal year 2025</p> <p>Total: \$72,750,000</p>	<p>3% of TTP funds made available for each fiscal year.</p> <p>\$20,174,454 for fiscal year 2021 \$24,000,000 for fiscal year 2022 \$24,000,000 for fiscal year 2023 \$24,000,000 for fiscal year 2024 \$24,000,000 for fiscal year 2025</p> <p>Total: \$116,174, 454</p>	<p>S. 2302 would break the bridges program out of TTP and provide an alternative funding source for the bridges program. The Tribal Transportation Facility Bridge set-aside would be an amount set aside from the newly-proposed Bridge Investment Program in S. 2302 and no longer a set aside of TTP funding.</p> <p>\$16,000,000 for fiscal year 2021 \$18,000,000 for fiscal year 2022 \$20,000,000 for fiscal year 2023 \$22,000,000 for fiscal year 2024 \$24,000,000 for fiscal year 2025</p> <p>Total: \$100,000,000</p> <p>Grants under this section would be awarded to tribal nations as formula grants, made available as if it were part of TTP.</p>	<p>H.R. 2 proposes to leave the bridges program as a set aside of TTP, whereas S. 2302 proposes to break the bridges program out from TTP and provide its own funding source.</p> <p>For comparison, in the first year of S. 2302, bridges funding would represent 2.83% of TTP funding, but funded from a new source other than TTP. By fiscal year 2025, the proposed amount under S. 2302 would equal 3.84% of TTP funding (for comparison only because S. 2302 provides a new funding source).</p> <p>Both H.R. 2 and S. 2302 expand project eligibility for the bridges program to include various types of construction and reconstruction projects. Both bills would expand bridge facility eligibility to those in poor condition, as opposed to only those that are structurally deficient.</p> <p>H.R. 2 provides greater overall funding for TTP and for the TTP bridges program than S. 2302.</p>

Surface Transportation Reauthorization Bill Analysis



Program	Currently Enacted:	H.R. 2: INVEST in America Act	S. 2302: America's Transportation Infrastructure Act	Notes/Comments
<p>Tribal High Priority Projects Program</p> <p>This program would provide funding to tribal nations or a governmental subdivision of a tribal nation whose annual allocation of funding received under the TTP is insufficient to complete the highest priority project of the tribal nation, or to any tribal nation that has an emergency or disaster occur on a tribal transportation facility that renders the facility impassible or unusable.</p>	<p>N/A</p>	<p>\$50,000,000 set aside from TTP funds in each of fiscal years 2022-2025.</p> <p>H.R. 2 would also increase the maximum project size dollar threshold to \$5,000,000.</p> <p>Total: \$200,000,000</p>	<p>\$9,000,000 set aside from TTP funds in each of fiscal years 2021-2025.</p> <p>\$30,000,000 for each of fiscal years 2021-2025 from the General Fund.</p> <p>Total: \$139,000,000</p>	<p>In S. 2302, the \$30 million is authorized to be appropriated out of the General Fund. As such, it will be subject to the appropriations process and is not mandatory.</p> <p>While H.R. 2 proposes a new set aside of TTP funding for this program, the overall access to tribal-specific funds for TTP, bridges, and the Tribal High Priority Projects Program in H.R. 2 is greater than S. 2302.</p>

Surface Transportation Reauthorization Bill Analysis



Program	Currently Enacted:	H.R. 2: INVEST in America Act	S. 2302: America's Transportation Infrastructure Act	Notes/Comments
Tribal Transportation Safety Needs	<p>Tribal Transportation Safety Funds are currently a 2% set aside of TTP.</p> <p>2% of TTP funds for 2020 is \$10,100,000.</p> <p>\$9,300,000 for fiscal year 2016 \$9,500,000 for fiscal year 2017 \$9,700,000 for fiscal year 2023 \$9,900,000 for fiscal year 2024 \$10,100,000 for fiscal year 2025</p> <p>Total: \$48,500,000</p>	<p>Tribal Transportation Safety Funds would remain a 2% set aside amount of TTP.</p> <p>\$13,449,636 for fiscal year 2021 \$16,000,000 for fiscal year 2022 \$16,000,000 for fiscal year 2023 \$16,000,000 for fiscal year 2024 \$16,000,000 for fiscal year 2025</p> <p>Total: \$77,449,636</p>	<p>S. 2302 would increase the set aside of the Tribal Transportation Program Safety funds to 4%.</p> <p>\$22,600,000 for fiscal year 2021 \$23,200,000 for fiscal year 2022 \$23,800,000 for fiscal year 2023 \$24,400,000 for fiscal year 2024 \$25,000,000 for fiscal year 2025</p> <p>Total: \$ 119,000,000</p> <p>S. 2302 would require the Director of the BIA to require all law enforcement offices of the BIA, for the purpose of reporting motor vehicle crash data for crashes occurring on Indian reservations and in Alaska Native communities to use the crash report form of the applicable state and to upload the information on that form to the Incident Management Analysis and Reporting System (IMARS) of the Department of the Interior.</p>	<p>S. 2302 has greater funding for safety activities than H.R. 2 at the expense of a greater set aside of TTP funds.</p> <p>The effect of raising the safety set aside from 2% to 4% in S. 2302 is to restrict \$59.5 million in additional funding from the TTP program over five years to fund increases in transportation safety activities.</p> <p>S. 2302 would require the Secretary of Transportation, in consultation with tribal nations and the Secretary of Interior, to develop best practices for compiling, analysis, and sharing of motor vehicle crash data for crashes occurring on Indian reservations and in Alaska Native communities; and a standardized form for use by tribal nations to carry out those best practices.</p>

Surface Transportation Reauthorization Bill Analysis



Program	Currently Enacted:	H.R. 2: INVEST in America Act	S. 2302: America's Transportation Infrastructure Act	Notes/Comments
<p>Federal Obligation Limitation</p> <p>A limitation is placed on Federal-aid highway and highway safety construction program obligations to act as a ceiling on the obligation of contract authority that can be made within a specified time period. The limitation is designed, in part, to protect against insolvency of the Highway Trust Fund - the source of TTP funding.</p> <p>The TTP program is subject to the federal obligation limitation and shares in a deduction of funding each year. These deductions can be in excess of \$10 million each year.</p>	<p>TTP is currently subject to the obligation limitation.</p>	<p>H.R. 2 would prohibit the Secretary of Transportation from applying obligation limitation authority to TTP for FY 2022-2025.</p> <p>In FY 2021, H.R. 2 calls for the same obligation limitation as was used in FY 2020 for the one year extension of the FAST Act. However, the supplemental funding authorized for FY 2021 would not be subject to a reduction in funding due to the obligation limitation.</p>	<p>TTP would remain subject to the obligation limitation and would continue to share in a deduction of annual TTP funding.</p>	<p>H.R. 2 does not exempt the tribal transportation program from the obligation limitation in the exemptions section. Instead, H.R. 2 states that the Secretary of Transportation shall not distribute obligation limitation authority to the TTP program for FY 2022-2025.</p> <p>The intended effect in H.R. 2 is to fully fund TTP because no limitation authority can be distributed to the program, despite it being a part of the calculation to determine the overall federal obligation limitation in a given fiscal year. This should take the TTP funds into consideration for protection of the solvency of the Highway Trust Fund, while eliminating a large deduction on TTP funding each year.</p> <p>S. 2302 would keep the limitation and deduction in place for TTP, potentially reducing funding by tens of millions of dollars over five years.</p>

Surface Transportation Reauthorization Bill Analysis



Program	Currently Enacted:	H.R. 2: INVEST in America Act	S. 2302: America's Transportation Infrastructure Act	Notes/Comments
<p>Bureau of Indian Affairs Road Maintenance Program</p> <p>The BIA Road Maintenance program funds are administered for the maintenance of BIA roads systems. The BIA road system is part of the National Tribal Transportation Facility Inventory (NTTFI). The definition of BIA roads includes all transportation-related facilities used in surface transportation such as: roads, bridges, ferry terminals, ferry boats, trails, boardwalks, primitive roads, and administrative roads to BIA agency offices.</p>	<p>The BIA Road Maintenance Program is currently funded at approximately \$36 million in FY 2020. Funding has been relatively stagnant, ranging between \$30-\$36 million for the last several years.</p>	<p>H.R. 2 does not include funding amounts for the BIA Road Maintenance program as of 6/16/20. BIA Road Maintenance is the jurisdiction of the House Committee on Natural Resources.</p>	<p>\$50,000,000 for fiscal year 2021 \$52,000,000 for fiscal year 2022 \$54,000,000 for fiscal year 2023 \$56,000,000 for fiscal year 2024 \$58,000,000 for fiscal year 2025</p> <p>S. 2302 would increase the authorization of BIA Road Maintenance funding by approximately \$14 million in FY 2021, increasing by \$2 million each fiscal year.</p>	<p>While the increase in S. 2302 is considerable compared to prior year funding levels for the program, it falls drastically short of addressing the backlog of road maintenance for Indian Country, estimated in 2018 to be somewhere between \$300-\$490 million.</p> <p>An OMB-approved survey conducted by the Tribal/Interior Budget Council found that in FY 2017, \$47.26 million of TTP expenditures were for allowable maintenance activities. This is in addition to \$30.3 million for BIA Road Maintenance. The demonstrated effect is that many tribal nations are using TTP dollars to backfill unmet BIA Road Maintenance need.</p>
<p>Public Transportation on Indian Reservations (A.K.A., Tribal Transit Program)</p> <p>Federally recognized tribes may use the funding for capital, operating, planning, and administrative expenses for public transit projects that meet the growing needs of rural tribal communities. All activities eligible under Section 5311 are also eligible under the TTP.</p>	<p>\$30,000,000 for each fiscal year as formula grants.</p> <p>\$5,000,000 for each fiscal year as competitive grants.</p> <p>Total: \$175,000,000</p>	<p>H.R. 2 extends enacted amounts for FY 2020 to FY 2021. For each of the amounts given below, \$10 million would be for the competitive grant portion of the transit program, the remainder is formula-based transit funding.</p> <p>\$55,679,500 for fiscal year 2022 \$56,392,100 for fiscal year 2023 \$57,134,374 for fiscal year 2024 \$57,574,383 for fiscal year 2025</p> <p>Total: \$261,780,357</p>	<p>S. 2302 does not include funding for the tribal transit program. The Tribal Transit Program is under the jurisdiction of the Senate Committee on Banking, Housing, and Urban Affairs.</p>	<p>Funding for the Tribal Transit Program under H.R. 2 would increase by about \$20 million in fiscal year 2022, with subsequent increases for three more years.</p> <p>Both the formula portion and the competitive grant portion would increase under H.R. 2.</p>

Surface Transportation Reauthorization Bill Analysis



Program	Currently Enacted:	H.R. 2: INVEST in America Act	S. 2302: America's Transportation Infrastructure Act	Notes/Comments
<p>Nationally Significant Federal Lands and Tribal Projects (NSFLTP) program under S. 2302</p> <p>OR</p> <p>Federal Lands and Tribal Major Projects program, under H.R. 2</p> <p>The NSFLTP program is a competitive grant program that provides funding for the construction, reconstruction, and rehabilitation of nationally-significant projects within, adjacent to, or accessing federal and tribal lands.</p>	<p>\$100 million for each of fiscal years 2016-2020.</p>	<p>H.R. 2 would establish the Federal Lands and Tribal Major Projects program, which is intended to be the successor replacement program to the NSFLTP program.</p> <p>\$400,000,000 for each of fiscal years 2022 through 2025 from the Highway Trust Fund.</p> <p>The dollar threshold for eligibility to receive a grant under the program would be lowered from \$25 million to \$5 million for tribal applicants.</p> <p>In the case of tribal projects, the federal share of the cost of the project is 100%</p> <p>H.R. 2 would require that 50% of the amounts made available for this program go to tribal transportation facilities.</p>	<p>\$50,000,000 for each of fiscal years 2021 through 2025 from the Highway Trust Fund.</p> <p>\$300,000,000 for each of fiscal years 2021 through 2025 from the General Fund.</p> <p>The dollar threshold for eligibility to receive a grant under the program would be lowered from \$25 million projects to \$12.5 million projects for tribal applicants.</p> <p>In the case of tribal projects, the federal share of the cost of the project is 100%.</p> <p>S. 2302 would require that 50% of the amounts made available for this program go to tribal transportation facilities.</p>	<p>H.R. 2 would provide \$50 million more each year than S. 2302 for this program.</p> <p>In S. 2302, the funding out of the General Fund would be subject to appropriations and not mandatory. So, there is a chance that the program would be funded lower than the enacted amount.</p> <p>Both bills would guarantee that half of the funding went to tribal applicants each year.</p> <p>H.R. 2 has a lower project size dollar threshold for eligibility in the program than S. 2302.</p>

Surface Transportation Reauthorization Bill Analysis



Program	Currently Enacted:	H.R. 2: INVEST in America Act	S. 2302: America's Transportation Infrastructure Act	Notes/Comments
<p>Bridge Investment Program</p> <p>S. 2302 would establish a bridge investment program awarded on a competitive basis to provide financial assistance for eligible bridge projects to improve the safety, efficiency, and reliability of the movement of people and freight over bridges.</p>	<p>N/A</p>	<p>N/A</p>	<p>\$600,000,000 for fiscal year 2021 \$640,000,000 for fiscal year 2022 \$650,000,000 for fiscal year 2023 \$675,000,000 for fiscal year 2024 \$700,000,000 for fiscal year 2025</p> <p>S. 2302 would create a bridge investment program awarded on a competitive basis to tribal governments and other eligible governmental entities.</p> <p>Federal funds other than federal funds made available under this section may be used to pay the remaining share of the cost of a project under the program by a tribal government or consortium of tribal governments. This provision applies to tribal governments and federal land management agencies.</p>	<p>S. 2302 creates a new funding source but it is competitive funding with a large pool of applicants.</p>
<p>Alternative Contracting Methods</p> <p>This section of each bill seeks parity in contracting solutions between tribal nations and states.</p>	<p>N/A</p>	<p>In H.R. 2 tribal nations may use contracting methods available to a state; such as, but not limited to, project bundling, bridge bundling, design-build contracting, 2-phase contracting, long-term concession agreements, and any method tested or that could be tested, under an experimental program relating to contracting methods carried out by the secretary.</p>	<p>In S. 2302 tribal nations may use contracting methods available to a state; such as, but not limited to, project bundling, bridge bundling, design-build contracting, 2-phase contracting, long-term concession agreements, and any method tested or that could be tested, under an experimental program relating to contracting methods carried out by the secretary.</p>	<p>Both H.R. 2 and S. 2302 seek to remedy contracting restrictions on tribal nations and federal land management agencies that have been available to states, but unavailable to tribal nations.</p>

Surface Transportation Reauthorization Bill Analysis



Program	Currently Enacted:	H.R. 2: INVEST in America Act	S. 2302: America's Transportation Infrastructure Act	Notes/Comments
<p>Promoting Resilient Operations for Transformative, Efficient, and Cost-Saving Transportation (PROTECT) Grant program</p> <p>S. 2302 would establish a competitive grant program for the use of materials or structural or nonstructural techniques that allow a project to better adapt to changing conditions and be better able to continue to serve the primary function of the project.</p>	N/A	N/A	<p>Of the amount made available under the competitive grant subsection, not less than 2% of funding for this program shall be awarded to tribal applicants in each fiscal year.</p> <p>This program is formulaic to the States, but issued by the Secretary of Transportation on a competitive basis to tribal governments and other eligible governmental entities.</p>	
<p>Certain Gathering Lines Location on Federal Land and Indian Land</p> <p>The issuance of a sundry notice or right-of-way for a gathering line and associated field compression or pumping unit that is located on Federal land or Indian land and that services any oil or gas well may be considered by the Secretary of the Interior as categorically excluded for purposes of the National Environmental Policy Act.</p>	N/A	N/A	<p>In S. 2302, this exclusion would apply to Indian land or a portion of Indian land for which the Indian Tribe with jurisdiction over the Indian land submits to the Secretary of the Interior a written request that the categorical exclusion should apply to that Indian land, or portion thereof.</p>	

Surface Transportation Reauthorization Bill Analysis

**H.R. 2:
INVEST in America Act**

**S. 2302: America's Transportation
Infrastructure Act**



Program	Currently Enacted:	H.R. 2: INVEST in America Act	S. 2302: America's Transportation Infrastructure Act	Notes/Comments
Environmental Reviews for Certain Tribal Transportation Facilities	N/A	N/A	S. 2302 would allow the Secretary of the Interior or the Secretary of Transportation, as applicable, to complete any approval or decision for the review of a tribal transportation safety project required under NEPA or any other applicable law on an expeditious basis using the shortest existing applicable process.	This section is from S. 1211, the AUTOS Act.
Programmatic Agreements for Tribal Categorical Exclusions S. 2302 would permit tribal nations to enter into programmatic agreements with the federal government to establish efficient administrative procedures for carrying out environmental reviews for projects eligible for assistance under the TTP program.	N/A	N/A	Agreements may include language that allows a tribal nation to determine whether a project is categorically excluded from environmental assessment or impact statements under the National Environmental Policy Act (NEPA).	This section is from S. 1211, the AUTOS Act.

Surface Transportation Reauthorization Bill Analysis



Program	Currently Enacted:	H.R. 2: INVEST in America Act	S. 2302: America's Transportation Infrastructure Act	Notes/Comments
Study of Road Maintenance on Indian Land	N/A	N/A	S. 2302 would require the Secretary of Interior, in consultation with the Secretary of Transportation, to carry out a study to evaluate the long-term viability and useful life of existing roads on Indian land; any steps necessary to achieve the goal of addressing the deferred maintenance backlog of existing roads on Indian land; programmatic reforms and performance enhancements necessary to achieve the goal of restructuring and streamlining road maintenance programs on existing or future roads located on Indian land; and recommendations on how to implement coordinated efforts between states, counties, municipalities, and other units of local government to maintain roads on Indian land. a follow-up report shall be submitted to congress no less than every 2 years.	This section is from S. 1211, the AUTOS Act.
Maintenance of Certain Indian Reservation Roads	N/A	N/A	U.S. Customs and Border Protection may transfer funds to the Director of the BIA to maintain, repair, or reconstruct roads under the jurisdiction of the BIA Director, subject to the condition that the Commissioner and the BIA Director shall mutually agree that the primary user of the subject road is U.S. Customs and Border Protection.	This section is from S. 1211, the AUTOS Act.

Questions/Comments: Tyler Scribner, *Policy Analyst*, tscribner@NCAI.org