

TESTIMONY OF
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DEPARTMENT OF THE INTERIOR
BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
MAY 15, 2019

Good afternoon Chairman Hoeven, Vice Chairman Udall and members of the Committee. Thank you for inviting the Department of the Interior (“Department”) to provide testimony on S. 1211, the “Addressing Underdeveloped and Tribally Operated Streets Act” (“AUTOS Act”).

My name is John Tahsuda and I am the Principal Deputy Assistant Secretary - Indian Affairs. On behalf of the Department, I would like to thank the Committee for its efforts to draw attention to the transportation programs and resource needs of Tribal Transportation in Indian Country. It is encouraging to see proposed legislation that specifically addresses many of the concerns we have been hearing from tribal leaders and tribal transportation professionals.

The Department offers the following comments and suggestions on the AUTOS Act as part of my testimony today.

Section 3. Categorical Exclusions to Certain Tribal Facilities.

Section 3 (a) of the bill defines “Tribal Transportation Safety Project” (“TTSP”) by referencing a list of eligible projects similar to 23 U.S.C. § 148 (a)(4) and this may be a concern for tribes. Under the “Moving Ahead for Progress in the 21st Century Act” (“MAP-21”), P.L. 112-141, section 148 (a)(4) defined a “highway safety improvement project” as including, “but not limited to, a project for 1 or more of the following” eligible projects. The “Fixing America’s Surface Transportation Act” (“FAST Act”), P.L. 114-94) changed the definition to read: “(B) INCLUSIONS.—The term “highway safety improvement project” *only* includes a project for 1 or more of the following” list of eligible projects. (*Emphasis added.*)

The change from “not limited” to “only” in the definition restricted the number of eligible projects to those listed. The tribes are concerned about the new limitation because some safety projects that they believed were valuable and effective are now ineligible for funding. The AUTOS Act appears to clearly re-define the list of eligible projects to those currently eligible under 23 U.S.C. § 202 (e). We ask that the Committee consider modifying the definition to allow greater flexibility for tribes, possibly by removing the word “only” in 23 U.S.C. § 148

(a)(4)(B), or by inserting a clause at the end of Section 3 (a) stating that, notwithstanding the limitation in §148 (a)(4)(B), tribes may propose, and the Secretary of Transportation may approve, additional safety projects beyond those listed.

Next, Section 3 (b) of the bill directs the Secretary of the Interior to examine 23 C.F.R. § 771.117 and determine which Categorical Exclusions (“CXs”) listed there could be applied to projects funded by the Tribal Transportation Program (“TTP”). We suggest that this subsection may not be needed because as part of the 2016 update to the regulations governing the TTP at 25 CFR Part 170, the Department adopted the CXs at 23 CFR § 771.117 for any projects funded by the TTP at 25 CFR § 170.453:

§ 170.453 Do the Categorical Exclusions under the National Environmental Policy Act (NEPA) and the regulations at 23 CFR 771 apply to TTP activities?

Yes. Regardless of whether BIA or FHWA is responsible for the oversight of a Tribe’s TTP activities, the Categorical Exclusions under NEPA at 23 CFR 771.117 governing the use of funds made available through title 23 shall apply to all qualifying TTP projects involving the construction or maintenance of roads.

Additionally, at the Secretary’s direction, the Department is updating its Departmental Manual to include Part 170’s adoption of the CXs at 23 C.F.R. § 771.117. Once complete, this should further speed implementation of 25 C.F.R. § 170.453 at the BIA Regional and Agency level. In light of the regulation’s adoption of 23 C.F.R. § 771.117, if the Committee prefers to address CXs in the bill then we suggest amending 23 U.S.C. § 202 to include language similar to 170.453.

We support Section 3 (c), related to the review of tribal safety projects, as drafted but we suggest that the Committee consider expanding the application of this provision beyond the Tribal Transportation Safety Program (“TTSP”) to include the review process for all projects that may be carried out under the TTP. As currently drafted, the 45-day mandate would apply to eligible projects under the TTSP set-aside authorized by 23 U.S.C. § 202 (e) that amounts to just 2% of the funds made available under the TTP. There are many more projects with greater diversity and complexity in the remaining 90%-plus of TTP funds that are not included in the current bill language, yet many of those projects are considered safety related. Additionally, activities accounting for approximately 80% of the proposed TTSP-eligible projects such as development of safety plans, road safety audits and studies, do not involve construction and may not be covered by Section 3 (c).

Coupled with the Department’s adoption of the CXs at 23 C.F.R. § 771.117 for TTP-funded projects, we believe that mandating a 45-day timeline for making a determination is reasonable and would likely be very beneficial to tribes.

Section 5. Use of Certain Funds.

This section would establish a separate funding amount for the replacement and rehabilitation of deficient tribal transportation facility bridges. Of the approximately 1,000 BIA bridges across the country, 169 are considered structurally deficient or functionally obsolete. We estimate that it will cost over \$105 million to repair, rehabilitate or replace these deficient or obsolete bridges. Additionally, there are approximately 2,400 bridges within Indian Country that are the responsibility of other public authorities such as states, counties or towns. Of these bridges, 393 are considered structurally deficient or functionally obsolete, with an estimated cost for repair, rehabilitation or replacement of over \$440 million.

Section 6. BIA Road Maintenance Program.

Section 6 authorizes additional funding for the BIA Road Maintenance Program (“RMP”), which would increase available funding specifically for BIA roads, bridges and other eligible transportation facilities. Its enactment could result in a total maintenance budget for BIA roads of at least \$46,000,000 in FY2021. In short, eligible public roads are those identified as the responsibility of the Secretary of the Interior. It appears that the funds authorized under this Section will be in addition to the annual Department appropriations for the RMP that are allocated among the ten (10) BIA regions consistent with the historic funding allocation methodology to carry out maintenance activities on eligible facilities consisting of approximately 29,100 miles of BIA roads and 1,000 BIA bridges.

Section 7. Study of Road Maintenance on Indian Land.

Section 7 requires the Secretary to carry out a study to evaluate road maintenance on Indian Lands, as defined by Section 7 (a)(1). We support this provision because the study should provide new information and data currently lacking in the TTP as well as insight into the backlog of needs across Indian Country. The study could also shed some light on short and long term actions of all public authorities that have an investment in transportation infrastructure on Indian Lands.

Carrying out the study will pose new but not insurmountable challenges because the public transportation facilities (roads, bridges, trails, etc.) on Indian Lands are located in 37 States, 482 counties, 34 boroughs and 13 parishes, as well as 573 tribal nations each with their own asset management protocols and road maintenance methods. This provision is interpreted to mean a study of road maintenance on all public roads on Indian Lands, or the entire 155,000 miles of the National Tribal Transportation Facility Inventory. To be clear, the Secretary is limited in the role of evaluating the roads owned by others (tribal, counties, municipalities and states) because much of the data is exclusive to those other public authorities.

Section 9. Tribal Transportation Safety Needs.

The BIA Office of Justice Service's (OJS) is presently using state crash report forms and uploading them to the Incident Management Analysis and Reporting System (IMARS) These crash forms are uploaded as a PDF external document to the system. As such, OJS is unable to perform data specific searches and statistical information is difficult, consuming time and resources. The IMARS electronic crash reporting capability is now functional in the IMARS system. We therefore recommend striking the provision requiring the use of crash reports from the applicable state and IMARS as being the specific electronic system. The OJS will begin using an electronic crash report starting in the fall of 2019. We are happy to work with the committee to develop a process that is beneficial to Indian Country.

Conclusion

The Department of the Interior would like to thank the Committee for this opportunity to provide testimony on the AUTOS Act. We look forward to continuing to work with this Committee, our tribal partners and the Federal Highway Administration in supporting and sustaining safe and effective transportation programs for tribal communities throughout Indian Country. The issues addressed in the AUTOS Act will positively impact and be an important part of employment, economic infrastructure and road safety for tribes. I would be happy to answer any questions you may have.