



# NATIONAL CONGRESS OF AMERICAN INDIANS

## ***SENATE COMMITTEE ON INDIAN AFFAIRS HEARING: Oversight hearing on tribal transportation: Paving the way for Jobs, Infrastructure, and Safety in Native Communities***

*September 15, 2011*

On behalf of the National Congress of American Indians (NCAI), thank you for the opportunity to testify on tribal transportation in Indian Country. NCAI is the oldest and largest national organization of Indian tribes in the United States and is dedicated to protecting the rights of tribal governments to achieve self-determination and self-sufficiency. NCAI looks forward to working with members of this Committee to enhance transportation infrastructure and jobs for Indian Country.

Transportation infrastructure development is critical to economic development, creating jobs, and improving living conditions for individuals and families in Indian Country, and the millions of Americans who travel through our reservations every day. Construction of transportation systems that allows for safe travel and promotes economic expansion will help us strengthen our tribal communities while at the same time making valuable contributions to much of rural America. Surface transportation in Indian Country involves thousands of miles of roads, bridges, and highways. It connects and serves both tribal and non-tribal communities.

Currently, there are over 140,000 miles of Indian reservation roads with multiple owners, including the Bureau of Indian Affairs, Indian tribes, states and counties. Indian reservation roads are still the most underdeveloped road network in the nation however; it is the principal transportation system for all residents of and visitors to tribal and Alaska Native communities. Approximately eight billion vehicle miles traveled on Indian Reservation Roads (IRR) Program system annually. Many road conditions on Indian reservations are unsafe, inequitable and it is the primary barrier to economic development and improvement of living conditions. For example, more than 60 percent of the system is unimproved earth and gravel, and approximately 24 percent of IRR bridges are classified as deficient. American Indians have the highest rates of pedestrian injury and vehicle deaths per capita of any racial or ethnic group in the United States. These conditions make it very difficult for residents of tribal communities to travel to hospitals, stores, schools, and employment centers.

The passage of a new transportation authorization is imperative for Indian Country for construction of roads and bridges; and the generation of jobs in Indian Country. As you are aware, tribal communities have faced Depression level unemployment for generations. In 2000, when the national unemployment rate was less than 3.5 percent, the on-reservation unemployment rate was 22 percent.<sup>1</sup> The Economic Policy Institute reports that the Native unemployment rate has risen at a rate 1.6 times the size of the white increase during the recession (to 15.2 percent for all Native people).<sup>2</sup> Jobs and unemployment are important issues for this Administration and tribal leaders, and next transportation authorization will help address these concerns for Indian and Alaskan Native communities.

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<sup>1</sup> U.S. Census Bureau, Census 2000 Summary File 4

<sup>2</sup> Algernon Austin, (2010), "Different Race, Different Recession: American Indian Unemployment in 2010." Retrieved at: <http://www.epi.org/page/-/pdf/ib289.pdf?nocdn=1>

## **JOBS IN TRIBAL TRANSPORTATION**

Transportation infrastructure development not only provides economic development but it also provides access to job training and employment in transportation related field. Unfortunately, there are not adequate unemployment data to show the depiction of accurate numbers of unemployment for every Indian tribes and Alaska Native villages. And, it is particularly concerning to us that the Bureau of Labor Statistics does not include on-reservation unemployment rates (often at levels well beyond 50 percent) in their monthly employment reports. This absence means that the unemployment rate for states with high Native populations is likely considerably understated, whether states with higher than average unemployment rates (as in Michigan or Oregon at 14.1 and 12.1%, respectively) or lower than average (as in Arizona or Montana, at 8.2 or 6.2% respectively). The role of this data in directing federal appropriations and guiding federal, tribal and state policymaking underscore the importance of remedying this situation.

### Long-term Job Planning

In order for any viable economic development growth there must be initiatives for workforce development for tribal and Alaska Native communities. To ensure that Indian Country develops and enhances a sophisticated skilled tribal work force in transportation construction it is important that Congress consider at long-term job planning. Job planning includes job training and skill development; and providing employment resources such as entrepreneurship training, resume building, internship programs, and referral services.

The recruitment and need for engineers, planners, entrepreneur and other skilled professional within tribal communities are necessary for transportation infrastructure. Tribal colleges and universities can play an important role in workforce and skills development, family support, and community education services. They are true community-based institutions, providing the education and skills development needed for entrepreneurship and job creation. According to a 2007 report from the Institute for Higher Education Policy, an associate's or bachelor's degree on a reservation may enable a person to create jobs by starting a business, foster the spirit of leadership and entrepreneurship, and alter negative cultural perceptions of education for future generations.<sup>3</sup> The economic and social benefits of one tribal citizen receiving a college degree are experienced throughout a community.

Tribal governments can serve as significant incubators of economic growth in relation to long-term job planning in general, and in innovating areas of transportation infrastructure specifically. To address these opportunities in the areas of transportation related jobs: supporting job programs such as Temporary Assistance for Needy Families, creating transportation related apprenticeship and the potential of tribal colleges and universities to spur job growth to the benefit of a range of rural communities.

### Tribal Technical Assistance:

The Tribal Technical Assistance Program (TTAP) is the only technical assistance program that provides much needed transportation related education and training to tribal governments for transportation road projects. Education and certification is important to assist in building a viable

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<sup>3</sup> Institute for Higher Education Policy. (2007). *The Path of Many Journeys: The Benefits of Higher Education for Native People and Communities*. Washington, DC: Institute for Higher Education Policy.

tribal transportation work force. In addition, having well qualified skilled workers enables Indian tribes and Alaska Native Villages to further develop tribal transportation infrastructure.

There are currently seven TTAP centers located around the country. TTAP is funded by both the U.S. Federal Highway Administration (FHWA) and U.S. Bureau of Indian Affairs (BIA). Currently, each TTAP receives \$280,000 a year in total funding, which is comprised of \$140,000 from the Local Technical Assistance Program and \$140,000 from the IRR program. This totals about \$1.9 million for the overall TTAP funding each fiscal year to serve all 565 federally recognized tribes.

To ensure that the TTAPs are able to meet the increased demand for their services and as additional tribes assume responsibility for administering their own transportation programs, NCAI recommends Congress to have the U.S. Department of Transportation institute a TTAP for each of the twelve BIA Regions. Additionally, NCAI recommends an increase to the overall funding of TTAPs from \$1.9 million to \$4.2 million each fiscal year. This much needed funding will assist each TTAP center to adequately address the increasing need for transportation technical assistances.

## **INFRASTRUCTURE**

After years of little investment in tribal infrastructure, America faces a national deficit of \$14.2 trillion that is prompting federal budget reductions that are likely to severely impede economic investment and undermine any progress towards establishing an Indian Country economy. As federal spending become more limited the need for enhancing infrastructure in Indian Country will continue to grow.

To help address the tough economy and budget deficit, infrastructure development is still essential for tribal economic growth. To achieve this there are some issues we would like this Committee and Congress to address that would spur infrastructure development:

- Establishing a tribal infrastructure bank that would form an independent financial institution owned by the government and tribes. This would give tribes the ability obtain funding for a broad range of infrastructure projects, and to be able to sell or issue general purpose bonds to raise funds for lending and investment.
- The equitable access to transportation is more critical in rural tribal communities because many tribal members do not own personal vehicles and must travel long distances to get to a job or school, or even see a healthcare professional. Supporting the tribal public transportation is essential to improving transportation infrastructure in Indian Country.
- Extending the Indian Self Determination Act and Educational Assistance Act (ISDEAA) to the Department of Transportation and its modal administrations will streamline the negotiation, execution and implementation of grant, contract and funding agreements for federal transportation program funding available to tribes and more effectively target program dollars to the improvement of our tribal transportation system.
- In order for tribes to construct road projects or improve existing road routes, tribes have to go to the Bureau of Indian Affairs to acquire rights-of-way. It has been articulated by tribes that obtaining the rights-of-way is a frustrating time-consuming and costly which hampers the transportation infrastructure development.

### Tribal Infrastructure Bank:

Last week, the President proposed the “American Jobs Act” that included the establishment of a National Infrastructure bank. In the proposal, the President has asked Congress to fund the infrastructure bank with \$10 billion to assist in leveraging with private and public capital to invest in

infrastructure projects. This would provide the ability to fund a broad range of infrastructure projects; it would make loans and loan guarantees and leverage private capital. It should be able to sell or issue general purpose bonds to raise funds for lending and investment, sell specific project bonds when necessary, and invite private investment, along with tribal government pension plan investments.

To address tribal specific transportation infrastructure needs, NCAI would like Congress to establish a Tribal Infrastructure Bank with an initial capital investment of \$10 million per year for five years. Section 350 of the National Highway System Designation Act of 1995, Public Law 104-59, authorized the U.S. Department of Transportation to establish the State Infrastructure Bank (SIB) Pilot Program. A SIB is a revolving fund mechanism for financing a wide variety of highway and transit projects through loans and credit enhancement. SIBs were designed to complement traditional Federal-aid highway and transit grants by providing States increased flexibility for financing infrastructure investments. Under the initial SIB Pilot Program, ten states were authorized to establish SIBs. In 1996 Congress passed supplemental SIB legislation as part of the DOT Fiscal Year (FY) 1997 Appropriations Act that enabled additional qualified states to participate in the SIB pilot program. This legislation included a \$150 million General Fund appropriation for SIB capitalization. Since then, Congress has continued to support the SIB program, and specifically reauthorized it in SAFETEA-LU.

The Tribal Infrastructure Bank (TIB) Pilot Program under which Tribes would be eligible to obtain infrastructure funds in the form of capital investments for use on authorized transportation projects. The TIB would operate much like the SIBs. The TIB would be initially funded with Federal start-up capital, with the goal of becoming self-sufficient through its capital lending program. Tribes would be eligible to leverage their IRR program and other Federal transportation funds to obtain financing from the TIB at reasonable rates as one preferred method of the flexible financing techniques described above. Loans from the TIB shall not exceed a 20 year period.

#### Transit:

All transportation infrastructures including transit are important to economic growth in Indian Country. Tribal transit is a necessary element to transportation infrastructure because it offers tribal members access to employment, health, education and commerce for tribes. Lack of employment has continuously been a difficult issue for tribes. Currently, the approximate unemployment rate for on-reservation Indians is 18.6%, while for Alaska Native villages it is 25.1%. In addition, 15% of tribal members have to travel over 100 miles to access basic services such as a bank or ATM. The combination of high unemployment and the long distances to travel to access basic services result in a great need for public transportation infrastructure in Indian Country and surrounding non-Indian rural communities.

In 2005, the enactment of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-59, authorized the U.S. Department of Transportation Federal Transit Administration (FTA) to administer Section 5311 (c), the “Public Transportation on Indian Reservations Program” or as it is referred to as, Tribal Transit Program. The purpose of the Tribal Transit Program is to fund capital, operating, planning, and administrative expenses for public transit projects in rural tribal communities.

The Tribal Transit Program provides grant transit funding through a national competitive process to federally-recognized tribes. The Tribal Transit Program funding level began at \$8 million for FY 2006 and increased to \$15 million for FY 2010. Since the initiation of the Tribal Transit Program, FTA has awarded approximately 236 grants to tribes totaling \$60 million. However, the total amount requested

by tribes who have applied for the Tribal Transit program is approximately \$189 million. So, even though the amounts that have been awarded thus far are a good start on addressing the immense need for public transportation in Indian Country, the overall need is much greater.

Many tribes utilize the Tribal Transit Program to begin or maintain their transit services on tribal lands. NCAI is conscious of the significant role that public transportation infrastructure plays in Indian Country, and how much tribes rely on this transit funding to further their transportation infrastructure. It is important Congress continues to sustain the Tribal Transit Program.

NCAI recommends the following: 1). Funding: increase funding for Tribal Transit Program to \$35 million for FY2012 with stepped increases of \$10 million for every year thereafter to \$85 million; and 2). Transit Planning: raise the current cap for Transit Planning Grants to \$50,000. Currently, tribes are capped at \$25,000 to use for planning and design. This cap is a hindrance for tribes who do not possess the financial resources to initially establish a reliable transit system on their tribal land.

#### Extend the ISDEAA to all DOT Programs

Since the implementation of the Indian Self Determination Act and Educational Assistance Act in 1975, infrastructure needs for many tribes have grown. Tribes opted to contract their own services in health, government and education, capital-intensive programs, it has spurred infrastructure development. New local jobs became available and many professional tribal members returned back to their tribal communities. Because of the diversity of tribal operations that were created as result of building local capacity, tribal governments were elevated to full-time operations.

Under the past few reauthorizations, Congress has sought to extend greater authority to tribes to carry out the Indian Reservation Roads (IRR) Program under ISDEAA agreements with the Bureau of Indian Affairs and the Federal Highway Administration. As a result, tribes have succeeded in reducing transaction costs and eliminating counterproductive bureaucratic practices in order to maximize federal investment in roads infrastructure and to put more people to work.

Still, conflicting grant conditions and contract requirements arising from other federal transportation programs continue to obstruct the efficient and cost-effective transportation infrastructure development Congress has envisioned for Indian Country. Few tribal governments have the staff or resources for negotiations to conform these extensive conditions and requirements to tribal-specific legal and policy considerations or to establish duplicative administrations for managing disparate contract and grant requirements – and they should not have to. In other agencies, tribal implementation of federal programs under the ISDEAA has allowed tribes to adopt uniform and more cost-effective accounting, management, procurement and reporting systems. Under ISDEAA, tribes spend less on program administration and more on program services and activities.

NCAI recommends the ISDEAA be extended to all Department of Transportation (DOT) programs serving tribes, including programs administered by the Federal Highways Administration (FHWA), FHWA-Federal Lands Highway, Federal Transit Administration, National Highway Traffic Safety Administration and other federal transportation agencies. Extending the ISDEAA to the DOT and its modal administrations will streamline the negotiation, execution and implementation of grant, contract and funding agreements and more effectively direct program dollars to enhancing our nation's transportation infrastructure system.

## Right of Way:

Congress has the opportunity to significantly enhance efficiency and cost-savings in infrastructure investment by requiring BIA to maintain adequate rights-of-way (ROW) records. Currently, BIA has no streamlined process to assist Tribes in securing proof of ROW quickly or in processing trust allotted land ROW applications in a short, defined timeline. Tribes preparing infrastructure improvements too frequently face delays and additional costs in their project administration because the BIA lack records of rights-of-way the Agency acquired, disposed of, or otherwise transferred long ago. For example, right now the Oglala Sioux Tribe has been working on securing BIA assistance to examine rights of way in the BIA's Land Title Records Office for a 21 mile project on Pine Ridge; to date, BIA has not been helpful. This echoes examples for numerous tribes when attempting to develop road projects on tribal lands. And, the timeline in receiving ROW varies depending on many variables including ownership of the road (State, county, BIA, or tribal route), the length in miles of the project, the reservation, whether the project crosses fee, restricted fee, allotted, or trust lands, whether the project is new construction or reconstruction of an existing route, the agency or regional office involved, the tribe involved, etc

To mitigate delays, NCAI recommends this Committee and Congress to require that BIA respond to a tribe's request for right-of-way documentation for routes on its priority construction list within 120 days. If the BIA lacks right-of-way documentation, the BIA - and not the tribe - should be responsible for the costs associated with obtaining enforceable rights-of-way. To fulfill this objective, NCAI proposes that Congress launch a \$10 million initiative for the Department of Interior to catalogue, organize, update and computerize right-of-way documentation.

## **SAFETY**

State governments spend between \$4,000 and \$5,000 per road mile on state road and highway maintenance. In contrast, road maintenance spending in Indian Country is less than \$500 per road mile. Indian Country has an unmet immediate need of well over \$258 million in maintenance funding for roads and bridges. Tribal members and communities are threatened by unsafe and often inaccessible roads, bridges, and ferries. Indian people suffer from injury and death by driving and walking along reservation roadways at rates far above the national average. According to Center Disease Control, "American Indians and Alaska Natives (AI/AN) are at increased risk of motor-vehicle related injury and death with rates 1.5 to 3 times higher than rates for other Americans."<sup>4</sup> And, other data shows 5,962 fatal motor vehicle crashes were reported on Indian reservation roads between 1975 and 2002 with 7,093 lives lost. The trend is on the increase, up nearly 25 percent, to over 284 lives lost per year in the last five years of study. While the number of fatal crashes in the nation during the study period declined 2.2 percent, the number of fatal motor vehicle crashes per year on Indian reservations increased 52.5 percent. American Indians also have the highest rates of pedestrian injury and death per capita of any racial or ethnic group in the United States.

Tribal communities share many similar concerns and obstacles as rural communities in addressing how to improve the safety needs. NCAI has worked diligently with tribal governments to find solutions for improving the safety and infrastructure of Indian Country. Presently, tribes receive a two percent set aside of the total allocation from the National Highway Traffic Safety Administration (NHTSA); the funding is then allocated to BIA where the BIA Highway Indian Safety Program administers the programs. The purpose of this program is to assist tribes with their proposed highway

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<sup>4</sup> Center for Disease Control, *Injuries Among American Indians/Alaska Natives (AI/AN)*: CDC Activities (2011), <http://www.cdc.gov/motorvehiclesafety/native/research.html>

safety projects, which are intended to reduce traffic crashes and impaired driving crashes; increase occupant protection education; provide emergency medical service training; and increase police traffic services. The two percent set aside is equivalent to \$14 million annually, and it is a competitive grant process. NCAI has heard concerns from tribal leaders about the inadequate effectiveness of the BIA Highway Indian Safety Program. In the past, there has been significant employee and leadership turnover within the BIA office. This has created a lack of guidance and support to tribes. For example, tribes have been denied competitive grant funding, but were not informed of the reasons for the denial. As a result, tribes contacted the office for a rationale for denial but were not provided assistance nor a return phone call.

NCAI recommends this Committee and Congress assist in confronting the high injury and fatalities on tribal roadways and to resolve the concerns about the BIA Highway Indian Safety Program by (1) establishing a two percent Tribal funding set-aside within the High Risk Rural Roads Program, (2) creating a new Tribal Traffic Safety Program within the FHWA-Federal Lands Highways office, and (3) funding each NHTSA, at \$50 million annually to dramatically reduce the incidence of death and injury on America's Indian reservation roads. The creation of these new programs would help to reduce the safety and behavioral problems that contribute to the high rates of death and injury on Indian reservation roads.

## **GAS EXCISE TAX**

To date, there are over 140,000 miles in the Indian Reservation Roads (IRR) system but yet it is the most underdeveloped road network in the nation<sup>5</sup>, and it is the primary transportation system for all residents of and visitors to American Indian and Alaska Native communities. Over two-thirds of the roads on the system are unimproved dirt or gravel roads, and less than 12 percent of IRR roads are rated as good.<sup>6</sup> The condition of IRR bridges is equally troubling. Over 25 percent of bridges on the system are structurally deficient.<sup>7</sup>

Tribal economies, education systems, health care and social service programs are threatened by unsafe and often inaccessible roads, bridges and ferries. A recent Federal traffic safety study showed that Indian tribes suffer the highest per capita traffic fatality rate in the Nation, more than four times the national average.<sup>8</sup> Each year, drivers on the IRR system travel over 2 billion vehicle miles on a system that is a clear health and safety hazard for our communities and an impediment to meaningful economic development.<sup>9</sup>

### Funding for Tribal Transportation Systems:

The current scheme for funding surface transportation in the United States is based on a federal-state motor fuel taxation regime that precludes tribes from participating in the system on an equitable basis. While the system of using federal fuel tax revenue for road construction and state fuel tax revenue for maintenance has worked to dramatically improve roads in many parts of the nation, it has failed miserably in Indian Country.

Like states, Indian tribes receive some funding for road construction from the federal Highway Trust Fund, but the amount given to tribes is much less than what states receive. Currently, Indian

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<sup>5</sup> Bureau of Indian Affairs, Transportation Serving Native American Lands: TEA-21 Reauthorization Resource Paper (2003) (attached).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> National Center for Statistics and Analysis, *Fatal Motor Vehicle Crashes on Indian Reservations: 1975-2002*, (2004)

<sup>9</sup> BIA Paper, *supra* note 1.

Reservation Roads make up nearly three percent of federal roadways, but they receive less than 0.5 percent of total federal highway funding.<sup>10</sup> At the current funding levels, the IRR program receives only about half the amount per road mile that states receive.

The federal government also makes some funds available to tribes for IRR maintenance under the BIA Maintenance Program. This Program is also woefully inadequate. The BIA spends less than \$1000 per mile for road maintenance, compared to estimates of \$4000-\$5000 per mile used by states to fund non-IRR maintenance.<sup>11</sup> Moreover, the states, who receive federal funding for their own roads that fall within reservations, frequently shirk their obligation to improve or maintain these roads and instead siphon off the funds for use elsewhere.<sup>12</sup>

Faced with a severe inadequacy of funding from federal and state sources, tribal governments have looked for other sources of revenue, including levying their own motor fuel taxes. While tribes have the same authority as other governments to collect taxes, the ability of tribes to tax fuel on tribal lands has been severely diminished by the Supreme Court. The Court has upheld the authority of the states to reach onto tribal land to collect a state motor fuel tax. The dual taxation that would result if both states and tribes impose a motor fuel tax makes it impractical for tribes to generate revenue through motor fuel taxes. Although some tribes and states have been able to negotiate motor fuel tax revenue-sharing agreements, those cases are the exception rather than the rule. In most areas, the state governments' collection of motor fuel taxes in Indian country displaces the ability of tribal governments to collect motor fuel taxes.

NCAI encourages this Committee to explore alternate sources of revenue for reservations roads. Given the dire conditions of reservation roads, it is unconscionable that the IRR program does not enjoy parity with the amount given to other governments through the Highway Trust Fund. NCAI feels strongly that this inequity of distribution must be addressed in whatever new system is devised to fund transportation systems across the nation. In addition, if motor fuel taxes are to remain the primary source of funding for road construction and maintenance, we urge the Committee to recommend that Congress clarify authority of Indian tribes to collect this tax on tribal lands. Finally, if the Committee recommends a dramatic change to the way revenue is raised for transportation costs, NCAI recommends that any such system be devised in a manner that treats Indian tribal governments equitably and gives them the same authority as state and local governments to raise revenue to fund the costs associated with building and maintaining transportation infrastructure.

## **CONCLUSION:**

This testimony has highlighted the unique challenges tribes and their members have faced for generations. NCAI's member tribes, and their citizens, face significant challenges – particularly in the midst of the budget reduction climate. However, as we move forward in addressing these challenges, it is critical to realize that tribal communities offer unique innovations that can make significant contributions to the policy debate regarding the economic crisis and the prospects for a fair and equitable recovery for all Americans. Indian tribes recognize that transportation infrastructure is vital to the enhancement of Indian tribal economic development and to provide safe and reliable transportation infrastructure to tribal communities and surrounding non-tribal areas. NCAI look forward to partnering with the Committee, as critical members of the federal policymaking community, to ensure tribes are included in developing and paving a way for tribal transportation.

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<sup>10</sup> U.S. Dept. of Transportation, Federal Highway Administration, TEA-21, A Summary (1998).

<sup>11</sup> Brief of *Amicus Curiae* the Inter-tribal Transportation Association in *Wagnon v. Prairie Band of Potawatomi*, available at <http://www.narf.org/sct/richardsvpbp/ITA%20amicus%20final.pdf>.

<sup>12</sup> *Id.*