

**STATEMENT OF  
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BEFORE THE COMMITTEE ON INDIAN AFFAIRS  
UNITED STATES SENATE  
HEARING ON PROPOSALS TO AMEND THE INDIAN RESERVATION ROADS  
PROGRAM -- S. 281, THE INDIAN TRIBAL SURFACE TRANSPORTATION  
IMPROVEMENT ACT OF 2003 and S. 725, THE TRIBAL TRANSPORTATION  
PROGRAM IMPROVEMENT ACT OF 2003  
JUNE 4, 2003**

Mr. Chairman and Members of the Committee, thank you for the opportunity to discuss S. 281, "The Indian Tribal Surface Transportation Improvement Act of 2003" and S. 725, "The Tribal Transportation Program Improvement Act of 2003." I also appreciate the opportunity this hearing affords to provide a brief background on the Department of Transportation's (DOT) Indian Reservation Roads (IRR) program of the Federal Lands Highways Program (FLHP), and an overview of provisions affecting Indian tribes and the IRR program in the "Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003" (SAFETEA), S. 1072, which President Bush sent to Congress on May 14.

### **Introduction**

The IRR system provides access to and within Indian reservations, Indian trust land, restricted Indian land, eligible Indian communities, and Alaska Native villages. These roads link housing, schools, emergency services, and places of employment, and facilitate tourism and resource use. An adequate system of roads and bridges is a key element of economic development and critical to the quality of life of Native Americans. The IRR program seeks to create the best tribal transportation system possible in balance with the environmental and cultural values of tribal lands and Alaska Native villages.

More than 2 billion vehicle miles are traveled annually on the IRR system, although it is among the most rudimentary of any transportation network in the United States. Over 66 percent of the system is unimproved earth and gravel and approximately 24 percent of IRR bridges are classified as deficient (functionally obsolete and/or structurally deficient). These conditions make it very difficult for residents of tribal communities to travel to hospitals, stores, schools, and employment centers.

The poor road quality--including design, road surface, and safety appurtenances--also affects safety. The annual fatality rate on Indian reservation roads is more than four times the national average. This is a very serious problem, and one which we have attempted to address in SAFETEA. As you know Secretary Mineta has made saving lives on the nation's roads and highways the guiding concern of our reauthorization proposal.

SAFETEA would reaffirm the Federal Government's commitment to providing safer and more efficient transportation for Indian lands by authorizing nearly \$2 billion in funding for the IRR program for fiscal years (FY) 2004 through 2009. This is a substantial increase over the authorized funding under the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21)--an increase of almost 25 percent. The Administration's funding proposal for Indian reservation roads is responsible, responsive, and sustainable.

The Administration's reauthorization proposals would also strengthen the commitment of the Federal Government to increasing the involvement of Native Americans in transportation programming and planning, not only through amendments to the FLHP, but under several other provisions of SAFETEA as well.

## **Safety Funding**

SAFTEA more than doubles the amount of funding available for highway safety. It creates a new core safety program, the Highway Safety Improvement Program (HSIP), with \$7.5 billion in funding authorized over six years. HSIP provides funds directly to the States for infrastructure safety improvements. This new proposed safety program contains flexibility and collaborative provisions that provide opportunities for tribal governments or their representatives to influence State infrastructure safety investments.

States have the flexibility to use HSIP funds on any public road, including roads on Indian reservations. A State could choose to use funds on a transportation facility on reservation land and could contract with the tribe to carry out the project. The new program also calls for State strategic and performance-based goals that address all roadways within the State and focus on areas of greatest need. Given the high fatality rates and condition of many Indian reservation roads, their safety needs should be considered in developing a data-driven highway safety improvement program that sets priorities for funding and future investment.

States are also encouraged to develop a comprehensive and collaborative strategic highway safety plan based on crash data. The plan would address the roadway, the driver, the vehicle, and emergency response needs. It would also be the product of a collaborative process that includes the State DOT, the Governors' Highway Safety Representative, the State rail safety administrator, and other State and local safety stakeholders. Indian tribes or their representatives would be considered major stakeholders in developing a strategic highway safety plan. This is particularly true in States with extensive Indian lands and high crash statistics on Indian reservation roads and bridges. While the Federal Highway Administration (FHWA) would not approve a State's strategic highway safety plan, FHWA and the National Highway Traffic Safety Administration (NHTSA) are required to certify that the plan meets the collaborative requirements in SAFETEA. To satisfy the requirement, tribal governments or their representatives would be expected to participate in developing a strategic highway safety plan in States with high crash rates on reservation roads and bridges. This is important in addressing Indian highway safety needs because strategic highway safety plans would serve as blueprints for future investment and set priorities for funding under the new safety program.

## **Intergovernmental Relationships**

Intergovernmental consultation with tribes remains a top priority for this Administration and for FHWA. Last year, during American Indian Heritage Month, President Bush proclaimed his commitment "to honor tribal sovereignty by working on a government-to-government basis with American Indians and Alaska Natives." He further committed to "honor the rights of Indian tribes and work to protect and enhance tribal resources" and to work "to increase employment and expand economic opportunities for all Native Americans." Clearly, safe and efficient transportation access to and within tribal lands is essential to improving the quality of life for Indian and Alaska Native families and communities, and to fulfilling the Administration's pledge.

Under the Indian Self-Determination and Education Assistance Act (ISDEAA), tribal governments can, and do, carry out planning and construction related activities under the IRR program, either through self-determination contracts or self-governance agreements. In fact, almost half of such activities are carried out by tribes. FHWA continues to learn about the unique needs of tribes and how best to provide assistance for programs that range from the large programs of the Navajo and Cherokee Nations to small tribes and villages just beginning to develop transportation expertise. We are committed to working with tribal governments to build and expand capacity needed to administer transportation programs just as we have, over the years, worked with State DOTs for capacity building.

However, even as Indian tribes develop and expand their capacity to undertake transportation projects and programs under ISDEAA, there remains an oversight and stewardship role at the Federal level. Improving accountability in the expenditure of Federal funds is of great consequence to Secretary Mineta and another important focus of our reauthorization proposal. Appropriate Federal oversight is still needed for IRR funded projects regardless of which level of government--tribal, State, county, or the Bureau of Indian Affairs (BIA) of the Department of the Interior (DOI)--executes the project.

## **Increasing Tribal Involvement**

While the IRR program has for many years been the primary source for funding transportation improvements on Indian lands, FHWA has encouraged tribal governments to take advantage of transportation resources that are available beyond the IRR program. These resources include technical assistance and training, as well as funding. One of the most important things that FHWA can do is to make sure tribal governments are part of overall agency programs.

In 1999, FHWA issued a publication on IRR transportation planning procedures and guidelines that explains how Indian tribes can successfully participate in the transportation planning process and work with other transportation agencies. The FHWA Federal-aid division offices have consulted with tribal governments on FHWA programs, National Environmental Policy Act (NEPA) requirements, and historic preservation. In some States, tribal/State Transportation summits and workshops have been

held with the objective of improving intergovernmental relations and increasing tribal governments' capacity to manage transportation projects and programs. In addition, FHWA has a Native American Program Coordinator who works with FHWA headquarters and field offices and Indian tribes on a broad range of transportation issues.

SAFETEA provides a number of opportunities for Indian tribes to participate in Federal-aid highway programs and program funding, in addition to resources provided by the IRR program. For example, tribes can use IRR planning funds to participate in metropolitan and statewide planning procedures for the Federal-aid program. Such participation can lead to cooperative approaches and leveraging funds between tribes and States on projects of mutual benefit.

SAFETEA proposes allowing a State to transfer apportioned Highway Trust Funds to a Federal agency, which could then administer a project under its procedures. This provision would make it possible for a State to electronically transfer apportioned funds to BIA. BIA could then contract with an Indian tribe under the ISDEAA.

Under SAFETEA, as under TEA-21, tribes have the opportunity to benefit from funding for programs such as Transportation Enhancements and Scenic Byways. A refined Transportation, Community, and System Preservation Program, that would be codified in a new section 167 of title 23, United States Code, provides that States shall make funds apportioned under the program available to Federally-recognized Indian tribes, among other identified recipients, for the broad range of activities eligible under the program.

Planning. SAFETEA would consolidate the FHWA and Federal Transit Administration (FTA) Metropolitan and Statewide Planning provisions in a new chapter 52 of title 49, United States Code. The consolidated planning chapter would continue the requirements that each State, at a minimum, consider the concerns of Indian tribal governments in carrying out statewide planning and develop the statewide transportation plan and statewide transportation improvement program (STIP) in consultation with tribal governments.

SAFETEA would also establish a new Planning Capacity Building Initiative, funded at \$20 million per year. One of the primary objectives of this initiative would be to enhance tribal capacity to conduct joint transportation planning under chapter 2 of title 23. Funds authorized for the program could be used for research, program development, information collection and dissemination, and technical assistance. The Secretary would be authorized to make grants to, and enter into contracts with, Indian tribal governments or consortia, among others, to carry out this program.

Tribal Technical Assistance Program (TTAP). As part of our TEA-21 implementation efforts to improve transportation for tribal lands while increasing tribal involvement in the process, FHWA renewed four TTAP centers and established three new ones. The TTAP centers are a part of a larger network of Local Technical Assistance Program centers (LTAP) that operate throughout the United States. Each State and Puerto Rico has an LTAP center. TTAP centers are in California, Colorado, Michigan, North Dakota, Oklahoma, and Washington State. The Washington State TTAP also serves the tribes in Alaska and has a permanent employee in Anchorage. The centers have been strategically located in those States and areas with large Native American and Alaska Native populations. The

centers are funded from amounts authorized for research and education under chapter V of title 23 and IRR program management funds.

The TTAP/LTAP centers are the most direct, hands-on method FHWA and its partners have for moving innovative transportation technologies out of the lab, off the shelf, and into the hands of people who maintain our tribal, local, and rural roads and streets. The national LTAP/TTAP mission is to foster a safe, efficient, environmentally sound transportation system by improving skills and knowledge of local transportation providers through training, technical assistance, and technology transfer, including institutional and program building activities. This is accomplished by providing the centers flexibility to tailor programs to provide technology services, technical assistance, training, products, advice, and educational resources to meet the varied needs of the local transportation workforce. This is particularly true in the operation of the TTAP centers. The LTAP/TTAP centers directly serve Indian tribes by helping them tap into new technologies and innovations, information, and training so they can improve their transportation operations. TTAP centers develop transportation training curriculum based on the needs of their tribal partners, including such courses as “IRR Rules of the Game,” “Multi-jurisdictional Transportation Planning and Programming,” “Highway Finance for Tribal Roads,” and “Developing a Tribal Transportation Department.” These centers are making a significant contribution to administrative capacity building in a number of areas, including development of planning programs and safety management systems.

During TEA-21, FHWA recognized the need to continue full Federal funding for the TTAP centers as was provided under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), without requiring Secretarial waivers. SAFETEA would continue funding eligibility for the centers, and would enhance the tribes' ability to utilize the program by establishing the Federal share of the cost of activities under the program at 100 percent. We believe that by eliminating the match requirement the TTAP centers will have more flexibility to better advance their programs.

## **IRR Bridge Program**

Indian Reservation Roads Bridge Program (IRRBP). TEA-21 directed the Secretary of Transportation, in cooperation with the Secretary of the Interior, to establish a Nationwide Priority Program for improving or replacing deficient Indian Reservation Road bridges, using a set-aside of not less than \$13 million of IRR funds per year. SAFETEA would continue this program and would expand eligibility and allow IRRBP funds to be used for design as well as construction.

After soliciting comments on project selection and fund allocation procedures, through meetings with tribal representatives and a Federal Register Notice, FHWA developed guidance for the Bridge Program that was published as an interim final rule in July 1999. We followed up with training sessions on the IRRBP in cooperation with BIA and the TTAP centers, and have been working with BIA and tribal governments to maximize the number of bridges participating in the program.

On May 8, 2003, FHWA published a final rule that adopted the interim final rule, establishing a nationwide priority program for improving deficient IRR bridges and also establishing the project selection and fund allocation procedures to ensure uniform application. Almost four years have passed

since publication of the interim final rule and we feel this has provided ample opportunity to observe its effectiveness and assess the appropriateness of the funding level. Since publication of the interim final rule, 76 deficient bridges have been approved for participation in the IRRBP and funded at approximately \$40.8 million. In FY 2003, 66 bridge plan, specification, and estimates (PS&Es) are slated for completion and will require roughly \$39.7 million in IRRBP construction funds. To date, all eligible bridge projects submitted for processing have been funded.

The IRRBP Final Rule identifies two categories of bridges covered under the IRR Bridge program (those owned by BIA and those owned by a State, county, or other public authority) and retains the \$1.5 million limitation on IRRBP funding for non-BIA owned bridges. The IRRBP is intended to provide a national program to address the large number of deficient IRR bridges. Approximately 23 percent of the 779 bridges owned by BIA are deemed deficient, as are 27 percent of the 3,006 State and locally owned non-BIA bridges. The \$1.5 million cap allows a greater number of bridges to receive funding. These IRR funds are intended to be supplemental to and not in lieu of other funds appropriated to the States. The States currently have access to Surface Transportation Program funds and Highway Bridge Replacement and Rehabilitation funds that can be used on deficient non-BIA owned IRR bridges. The transfer provision proposed in SAFETEA should facilitate improvement of State-owned bridges on reservations and, as discussed above, could be carried out by the tribes under ISDEAA contracts.

Highway Bridge Program. Other changes proposed by SAFETEA for the Highway Bridge Program, under section 144 of title 23, could also provide benefits for facilities on tribal lands. Systematic preventive maintenance would be added as an eligible use of funds, and would include preventive maintenance on off-system bridges as well. In addition, the 35 percent cap on funding for off-system bridges is eliminated.

## **Negotiated Rulemaking**

TEA-21 directed the Secretary of the Interior to develop an Indian Reservation Roads fund distribution formula and program procedures, using negotiated rulemaking with Indian tribes. A committee consisting of 29 tribal representatives, 10 Department of Interior representatives, and 3 FHWA representatives met between March 1999 and December 2001. Considerable time was spent in agreeing on one IRR funding distribution formula. A Notice of proposed rulemaking (NPRM) that resulted from the extended period of negotiations was published by DOI on August 7, 2002, in the Federal Register, with the comment period closing on October 7, 2002. The comment period was then extended by 30 days.

Federal and tribal committee members conducted 12 informational meetings on the proposed program procedures and fund distribution formula during the comment period. After close of the comment period, the Committee met a number of times to evaluate the more than 1500 comments received.

Although the vast majority of questions and answers relative to IRR program policies and

procedures were agreed to by both the Federal and tribal representatives on the Committee, there were a number of major disagreement items discussed in the preamble of the NPRM. While many of these prior disagreement items in the NPRM were resolved, a few disagreement items remain, including: use of IRR program management and oversight funds; content of annual funding agreement; contract support costs; profits/savings; advance payments; updating of the IRR transportation improvement program; IRR project audits; acceptance of completed projects; alternative dispute resolution procedures; and right-of-way procedures.

The Committee recommended a number of changes to the NPRM, and BIA is in the process of drafting the final rule.

**S. 281, "The Indian Tribal Surface Transportation Improvement Act of 2003" and S. 725, "The Tribal Transportation Program Improvement Act of 2003"**

S. 281 and S. 725, introduced earlier this year, and currently under review in this Committee, would make changes in the IRR program and in the amount and administration of Federal funding for transportation infrastructure on tribal land and in Alaska Native villages. While the Administration has concerns regarding certain aspects of these bills, this Administration is in agreement with Senators Campbell and Bingaman that the significant tribal transportation needs must be better addressed to foster greater economic development and provide a higher quality of life for people living in these communities. We strongly support a number of the provisions in the bills. Indeed, SAFETEA advances several similar proposals. The Department is anxious to work with this Committee to refine existing IRR provisions and craft new initiatives where appropriate for equitable and effective delivery of the IRR program.

Obligation Limitation. Between FY 1983 and FY 1997, Federal Lands Highways programs received 100 percent obligation authority each year equal to their new and carryover funds, but this was changed under TEA-21. Under section 1102 of TEA-21, these programs, including the IRR program, now receive a proportional reduction of obligation limitation for new funds using the same ratio that is applied to State programs. To comply with section 1102(f), the amount of contract authority for the IRR program in excess of the available obligation limit is pooled with other similar funds and redistributed to the States. Even with the increased resources provided in TEA-21, the partial loss of authorized funds has had a significant impact on the IRR program.

Both Senator Campbell's and Senator Bingaman's bills have provisions returning 100 percent obligation authority to the IRR program. SAFETEA would also provide obligation authority for the IRR program equal to contract authority so that all IRR funds authorized can be obligated. For each fiscal year, SAFETEA would set aside obligation authority equal to the amount of funding authorized for that year for the programs allocated under the FLHP, including the IRR program.

Authorizations. We agree with Senator Bingaman that there are substantial unmet transportation needs for Indian lands and for Alaska Native villages, just as there are for the States. However, the

increases in funding proposed by Senator Bingaman could not, we believe, be sustained by the Highway Trust Fund (HTF) over the reauthorization period without substantial cuts in other program areas. Any such cuts would ultimately have negative impacts on tribal transportation as well as State programs. We believe that the funding increase of almost 25 percent over TEA-21 as proposed in SAFETEA for the IRR program, together with full obligation authority, can make a substantial and responsible contribution toward meeting IRR program needs--and is sustainable.

Indian Reservation Road Bridges. Senator Bingaman would restore and increase separate funding for the IRRBP. Again, we believe that the HTF could not sustain the funding increase proposed and, as discussed above, our experience under TEA-21 indicates that the current funding of \$13 million per fiscal year is working well. We do agree with Senator Bingaman that preliminary engineering (PS&E) should be made eligible for IRRBP funds. SAFETEA proposes adding this eligibility.

Senator Bingaman would also add a restriction on how the bridge funds would be distributed, requiring distribution in proportion to the number of deficient bridges on each reservation and the projected cost of rehabilitation.

The program is administered as a competitive national program and currently distributes funds based on a first ready, first served basis, not allocated to reservations based on need. In other words, projects are funded in the order in which bridge construction plans are received. The goal of the nationwide program is to fix as many deficient bridges as quickly as possible.

We want to work with Senator Bingaman and this Committee to improve the IRRBP, and we would like to discuss ways of distributing funds that could be fair and effective.

Fair and Equitable Distribution of IRR Program Funds. Senator Bingaman has proposed that the Secretary verify the existence of all roads in the Indian Reservation Road system. Currently the system contains about 2,500 miles (5 percent) of proposed roads. About half of these proposed roads are located in the BIA Alaska region. Another 25 percent are located in the BIA Midwest region. Adding this provision would negatively impact smaller tribes that need new roads and do not have a current inventory, as well as disparately impacting certain regions. It would also undermine an agreement made during the IRR program negotiated rulemaking. We feel it is important to consider proposed roads in the IRR fund distribution formula.

Indian Reservation Road Planning. Senator Bingaman's proposed increase in the percent of IRR funds setaside for tribal transportation planning from 2 percent to 4 percent would double the largest tribe's funding to \$2.6 million, while the smallest tribes would still have only a nominal sum for planning. While we support providing transportation planning funds for tribes, we do not support an increase that relies on using the IRR construction fund distribution formula. We do not believe that this formula provides a fair distribution of planning funds to many of the tribes. The need for more transportation planning funds for small tribes was a point of contention during the negotiated rulemaking. We would like the opportunity to discuss this issue further with Senator Bingaman.

Improving Safety.



S. 281. Senator Campbell's bill would make Indian tribes that are eligible to participate in the Indian reservation roads program also eligible for grants under title 23, sections 157 ("Safety incentive grants for use of seat belts") and 163 ("Safety incentives to prevent operation of motor vehicles by intoxicated persons").

Motor vehicle injuries are the leading cause of death for American Indians and Alaska Natives between the ages of one through 44. Indeed, motor vehicle fatality rates are nearly 75 percent higher for Indians and Alaska Natives as for non-Indians. Greater safety belt use would substantially contribute to reducing these fatalities. In 2001, 78 percent of Native American passenger vehicle occupant fatalities were unrestrained, compared to 60 percent for the population overall. Also in 2001, 63 percent of Native American passenger vehicle occupant fatalities were alcohol-related, compared to 41 percent for the population overall.

Under current law, authorizations for the section 157 and section 163 grant programs, together with other TEA-21 safety incentives, expire at the end of FY 2003. In formulating SAFETEA, the Department took a new approach to addressing the Nation's safety belt use and impaired driving problems. To streamline the highway safety grant programs and make them more performance-based, SAFETEA proposes a major consolidation of these programs under NHTSA's section 402 program. BIA would be eligible for grants under the consolidated section 402 program.

Section 402(i) of title 23 designates the Secretary of the Interior as the coordinating entity for the purpose of application of the highway safety program for Indian tribes. The Secretary of the Interior has delegated this authority to BIA to administer the Federally funded highway safety program on behalf of the tribes. Indian tribes participate in the highway safety program through BIA, just as local governmental entities participate through their State Highway Safety Offices. This process has served the program well, as BIA contracts with individual Indian tribes meeting specific criteria. BIA serves in the capacity of a Governor's Highway Safety Representative in managing and monitoring the section 402 highway safety program.

TEA-21 increased section 402's highway safety funding formula for Indian tribes to  $\frac{3}{4}$  of 1 percent from  $\frac{1}{2}$  of 1 percent of the total apportionment for the section. Under provisions of SAFETEA, BIA would continue to receive an annual formula grant apportionment of not less than  $\frac{3}{4}$  of 1 percent of the program's total apportionment. Any or all of this apportionment could be used for increasing safety belt use and prevention of impaired driving. Over SAFETEA's 6-year authorization period, \$7.875 million would be available to BIA in Basic Formula Grants alone.

Moreover, the States, territories, and BIA would be able to participate in special grant programs for data improvements and emergency medical services. The data improvement grants, in particular, will enable BIA to improve its highway safety data and traffic records and target programs to the areas of greatest needs. Additionally, data improvements will facilitate BIA's participation in SAFETEA's performance-based incentive grant programs for increasing safety belt use and preventing impaired driving.

S. 725. Senator Bingaman's bill would establish a Tribal Transportation Safety Program to provide competitive grants to tribes for establishing transportation safety programs, promoting safety

belt use, hazard elimination, and other safety improvements, and would fund the program at \$120 million over 6 years.

We agree that transportation safety for Native Americans is a tremendous problem. In SAFETEA, as discussed above, overall funding for safety is more than doubled. Included in the additional safety funding, we propose a new dedicated safety funding category under the FLHP. Fifteen percent of the \$40 million per fiscal year authorized for FLHP safety funding would be allocated to BIA. The funds would be available for a variety of safety improvement activities including data collection and highway safety education programs. Contracts for the safety projects could be carried out by tribes under ISDEAA. The Federal share is 100 percent. These funds would supplement the  $\frac{3}{4}$  of 1 percent from the section 402 safety funds.

Demonstration Project. Both Senator Campbell's bill and Senator Bingaman's bill would amend section 202 of title 23 to authorize a demonstration project under the FLHP to allow, each fiscal year, up to 12 tribes or consortia of tribes to receive IRR funding directly from FHWA, rather than through the BIA. Upon request, FHWA must provide directly to an Indian tribal government or consortium selected for the project the amount of IRR program funding the tribe or consortium would otherwise receive under title 23 or a provision of the bill and, in addition, the percentage of such funds that would have been withheld for BIA management costs. The tribal government could then enter into contracts and agreements with FHWA in accordance with the ISDEAA. While both proposed demonstration projects require a tribe selected to have financial stability, unlike previous demonstration projects under ISDEAA, these projects do not define goals nor require a report to Congress.

The Department maintains that Federal oversight is necessary and desirable when taxpayer funds are invested in infrastructure projects through the Federal-aid highway program. Though Congress made clear in section 204(j) of title 23, that it is the sovereign right of an Indian tribe to determine which projects shall be Federally funded, FHWA has a history of working to develop competent, capable transportation organizations prior to delegation of program responsibilities. In section 302 of title 23, Congress required that States participating in the Federal-aid highway program must have suitably equipped and organized departments to carry out the duties required under title 23. We believe that it would be wise to assure that any Indian tribe selected for participation under the demonstration project should also have established a suitably equipped and organized department. Unlike the applicant pool requirements in the ISDEAA, the proposed demonstration project applicant pool requirements in S. 281 and S. 725 would not require a tribe to have any experience in the IRR Program, to have successfully completed one or more IRR projects or contracts, or to have any experienced staff.

Currently, there are 10 Self Governance Annual Funding Agreements which contain IRR addendums authorizing the Self Governance tribe or consortium of tribes to assume many of the projects, functions, services, activities, and responsibilities of the IRR program. The first two agreements began as pilots with the Red Lake Band of Chippewa Indians in Minnesota in FY 1999 and with the Cherokee Nation of Oklahoma in FY 2000. Subsequent Agreements are no longer pilot agreements. However, these agreements do include provisions allowing FHWA and/or BIA to review the quality of the work performed, monitor health and safety, and provide technical assistance when

needed. The results of these two pilots provided some direction concerning tribal project oversight, along with identifying any unforeseen operation or process problems.

FHWA believes that these Self Governance activities already underway can accomplish much of what is proposed in S. 281 and S. 725.

Administration of Indian Reservation Roads. Senator Campbell's bill would place a cap of 6 percent on the total amount of IRR funds that BIA and tribes can use for administrative expenses. This limit would apply to all general IRR program administrative expenses and individual project expenses as well.

S. 281 further states that such administrative funds are to be made available to Indian tribal governments, upon request, to be used for the associated administrative functions assumed by the Indian tribe pursuant to the ISDEAA.

Unlike most of the Indian programs funded under the DOI annual appropriations acts, Congress does not provide additional funding beyond the IRR program's authorization to fund BIA program management activities in the IRR program but, instead, directs that up to 6 percent of the IRR program funding can be used for these activities. BIA and FHWA have entered into a memorandum of agreement (MOA) under which the BIA provides assistance to more than 560 tribes including: fostering capacity building; providing training, technical assistance, and oversight; participating in planning with State DOT's and other Federal agencies; and providing 50 percent of the funding for the FHWA TTAP centers. BIA services are especially critical to smaller tribes. These BIA services are otherwise unfunded.

Based on the current amounts needed for program management and project administrative costs, including BIA costs of negotiating and administering ISDEAA contracts and agreements, this provision could result in reduced service to tribes and reduced program and project oversight. Through the MOA, BIA assists FHWA in providing appropriate stewardship of Federal funds. If this provision is enacted, FHWA would have to increase its IRR program and project oversight activities to meet its oversight responsibilities.

S. 281 would also limit the Federal government's ability to review construction plans and specifications to check for health and safety considerations. This would affect all Federally-funded IRR construction projects performed by tribes under the ISDEAA. Indian tribes would be able to assure that proposed construction is in accordance with health and safety standards without requiring concurrence or approval by the transportation facility's owner. About 96 percent of Indian reservation roads are not owned by tribes. Because the majority of the improvements funded under the IRR program involve BIA-owned roads and bridges, BIA assumes the trust responsibilities and accompanying liabilities. Thus, FHWA believes it is necessary for BIA to retain an appropriate oversight role and have available sufficient administrative funds to fulfill its oversight and stewardship responsibilities for the IRR program and for ISDEAA.

Finally, the overall administration of the Indian Reservation Road program will be modified as a result of the Negotiated Rulemaking Process and some aspects of the S. 281 proposals, including PS&E approval, are likely to be implemented through the pending regulations.

Training and Technical Assistance for Native Americans. Title II of Senator Campbell's bill, the "Native American Commercial Driving Training and Technical Assistance Act," would establish a grant program to provide training to Native Americans who are interested in obtaining commercial driver's licenses (CDLs) and is intended to expand employment opportunities for Native Americans. The program would be administered by the Secretary of Labor. Grants would be made on a competitive basis to tribal colleges and universities to conduct the training programs. Such sums as necessary to carry out the program are authorized from the General Fund.

Although the Department supports the objectives of title II, and is always interested in increasing commercial vehicle driver training and safety, it is not clear that additional new training programs are the best way to achieve these aims. There are many driver training programs now in operation, both in junior colleges and proprietary vocational schools, and all of them are open to Native Americans. I know of no evidence that these schools are unable to meet current demand for driver training. Furthermore, the expenses incurred in starting new programs at tribal colleges or universities could raise their per capita training costs well above those of existing schools. That would be especially likely if the number of student drivers enrolled in each tribal program remained small.

Moreover, TTAP centers, discussed above, have also been providing CDL training as part of their tribal transportation capacity building. The training is specifically targeted to qualify Native Americans to successfully complete the driving and written tests for various types of CDLs. Not only does this training increase workforce skills for self-determination contracting, but also opens job opportunities on State and local highway construction projects. The centers offer the training when requested and find that, while demand for training is steady in the early stages of tribal capacity building, demand later tends to become more cyclical in response to need for additional CDL drivers. S.281, if enacted, would duplicate some of the TTAP programs.

Indian Reservation Rural Transit Program. S. 725 would establish a program to provide direct funding to tribes from FTA for rural transit programs on reservations or other land under tribal jurisdiction. The new competitive grants program would be funded at \$20,000,000 per year as a takedown from FTA's authorizations under 49 U.S.C. 5338. The amount of any grant provided to an Indian tribe would "be based on the need of the Indian tribe," as determined by the Secretary.

By contrast, section 3010 of SAFETEA would create a program under which States would provide grants to Indian tribes to establish, operate, and maintain transit services on Indian reservations and other lands under the jurisdiction of Indian Tribes. This Indian Reservation Rural Transit Program would be funded at \$10,000,000 per year in fiscal years 2004 through 2009, of which \$9.5 million would be available to States based on formulas; the other \$500,000 would be available to the Secretary to provide technical assistance to States and tribes through grants, contracts, and other arrangements. The program would be funded as a takedown from 49 U.S.C. 5338, and any remaining funds available three years following the fiscal year in which they were apportioned would be reapportioned to the States.

The Department believes that the funding level proposed in SAFETEA is the appropriate level for a start-up program. In addition, we believe it is preferable to award grants to the States, in order that: tribal transit services are coordinated with other public transportation services that will be funded

under section 5311; tribes have full access to the training and technical assistance available to other subrecipients under section 5311; funds are distributed equitably across the United States; and any remaining funds are available for reapportionment.

## **Conclusion**

The Department of Transportation is committed to building more effective day-to-day working relationships with Indian tribes reflecting respect for the rights of self-government and self-determination, based on principles of tribal sovereignty. We are also committed to working with Congress, with the tribes, and with BIA to improve delivery of the Indian Reservation Road program. Transportation is a critical tool for tribes to improve the quality of life in their communities. The challenges facing us are to maintain and improve transportation systems serving Indian lands and Alaska Native villages, in order to provide safe, sufficient transportation options for residents and access for visitor enjoyment, while at the same time protecting the environmentally sensitive lands and cultural resources. Innovative and creative solutions will be required to address these challenges, and the solutions must involve all Federal, tribal, State, and local stakeholders.

We take very seriously the concerns regarding the IRR program voiced by tribal representatives at earlier hearings before this Committee, and in other forums, and we will continue to do our best to meet tribal expectations. In doing so, we will consider alternative ways of doing business that can improve our program delivery. On behalf of the Department of Transportation, I look forward to working with you to find solutions for improved mobility and safety to and within Federal and tribal lands.

Mr. Chairman, I again thank you for the opportunity to testify today. I will be pleased to answer any questions you may have.