

108TH CONGRESS
1ST SESSION

S. 725

To amend the Transportation Equity Act for the 21st Century to provide from the Highway Trust Fund additional funding for Indian reservation roads, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 27, 2003

Mr. BINGAMAN (for himself, Mrs. FEINSTEIN, Mr. DAYTON, and Mr. LEAHY) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To amend the Transportation Equity Act for the 21st Century to provide from the Highway Trust Fund additional funding for Indian reservation roads, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Tribal Transportation
5 Program Improvement Act of 2003”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress finds that—

1 (1) because many Indian tribes are located in
2 remote areas, transportation is particularly impor-
3 tant to the basic quality of life and economic devel-
4 opment of Indian tribes;

5 (2) safe roads are essential for—

6 (A) Indian children to travel to and from
7 school;

8 (B) sick and elderly individuals to receive
9 basic health care and medical treatment; and

10 (C) food and other necessities to be deliv-
11 ered to shops and consumers;

12 (3) transportation is critical to the efforts of In-
13 dian tribes to—

14 (A) sustain robust economies; and

15 (B) attract new jobs and businesses;

16 (4) most Indian tribes lack the basic transpor-
17 tation systems that other people in the United
18 States take for granted;

19 (5) Indian communities continue to lag behind
20 the rest of the United States in quality of life and
21 economic vitality;

22 (6) unemployment rates in Indian country fre-
23 quently exceed 50 percent, and poverty rates often
24 exceed 40 percent;

1 (7) the limited availability of housing and jobs
2 on Indian reservations forces people to commute
3 long distances each day to travel to work or school,
4 obtain health care, take advantage of basic govern-
5 ment services, go shopping, or even obtain drinking
6 water;

7 (8) the Indian reservation roads system estab-
8 lished under title 23, United States Code, comprises
9 more than 50,000 miles of roads under the jurisdic-
10 tion of the Bureau of Indian Affairs and tribal,
11 State, county, and local governments;

12 (9) more than $\frac{2}{3}$ of those roads are not paved,
13 and many resemble roads in third-world countries;

14 (10) as of the date of enactment of this Act,
15 approximately 140 of the 753 bridges under the ju-
16 risdiction of the Bureau of Indian Affairs are rated
17 as being deficient;

18 (11) The Indian reservation roads system
19 serves both Indians and the general public and is
20 part of a unified national road network;

21 (12) even though the Indian reservation roads
22 system is perhaps the most rudimentary of any
23 transportation network in the United States, more
24 than 2,000,000,000 vehicle miles are traveled annu-
25 ally on the system;

1 (13) the poor quality of so many Indian res-
 2 ervation roads has a serious impact on highway safe-
 3 ty;

4 (14) according to the Federal Highway Admin-
 5 istration, the highway fatality rate on Indian res-
 6 ervation roads is 4 times the national average high-
 7 way fatality rate on all roads;

8 (15) automobile accidents are the primary
 9 cause of death for young Indian individuals; and

10 (16) the Federal Highway Administration esti-
 11 mates the backlog of improvement needs for Indian
 12 reservation roads at approximately \$6,800,000,000.

13 (b) PURPOSE.—The purpose of this Act is to reau-
 14 thorize, expand, and streamline the Indian reservation
 15 roads program to improve transportation safety and better
 16 meet the needs of Indian individuals and other members
 17 of the traveling public.

18 **SEC. 3. INDIAN RESERVATION ROADS.**

19 (a) AUTHORIZATION OF APPROPRIATIONS.—Section
 20 1101(a)(8)(A) of the Transportation Equity Act for the
 21 21st Century (112 Stat. 112) is amended by striking “of
 22 such title” and all that follows and inserting “of that
 23 title—

24 “(i) \$225,000,000 for fiscal year
 25 1998;

1 “(ii) \$275,000,000 for each of fiscal
2 years 1999 through 2003;

3 “(iii) \$350,000,000 for fiscal year
4 2004;

5 “(iv) \$425,000,000 for fiscal year
6 2005; and

7 “(v) \$500,000,000 for each of fiscal
8 years 2006 through 2009.”.

9 (b) OBLIGATION CEILING.—Section 1102(c)(1) of the
10 Transportation Equity Act for the 21st Century (23
11 U.S.C. 104 note; 112 Stat. 116) is amended—

12 (1) by striking “distribute obligation” and in-
13 serting the following: “distribute—

14 “(A) obligation”;

15 (2) by inserting “and” after the semicolon at
16 the end; and

17 (3) by adding at the end the following:

18 “(B) for any fiscal year after fiscal year
19 2003, any amount of obligation authority made
20 available for Indian reservation road bridges
21 under section 202(d)(4), and for Indian res-
22 ervation roads under section 204, of title 23,
23 United States Code;”.

24 (c) INDIAN RESERVATION ROAD BRIDGES.—Section
25 202(d)(4) of title 23, United States Code, is amended—

1 (1) in subparagraph (B)—

2 (A) by striking “(B) RESERVATION.—Of
3 the amounts” and all that follows through “to
4 replace,” and inserting the following:

5 “(B) FUNDING.—

6 “(i) RESERVATION OF FUNDS.—Not-
7 withstanding any other provision of law,
8 there is authorized to be appropriated from
9 the Highway Trust Fund \$15,000,000 for
10 each of fiscal years 2004 through 2009 to
11 carry out planning, design, engineering,
12 construction, and inspection of projects to
13 replace,”; and

14 (B) by adding at the end the following:

15 “(ii) AVAILABILITY.—Funds made
16 available to carry out this subparagraph
17 shall be available for obligation in the same
18 manner as if the funds were apportioned
19 under chapter 1.”; and

20 (2) in subparagraph (D)—

21 (A) by striking “(D) APPROVAL REQUIRE-
22 MENT.—” and inserting the following:

23 “(D) APPROVAL AND NEED REQUIRE-
24 MENTS.—”; and

1 (B) by striking “only on approval of the
2 plans, specifications, and estimates by the Sec-
3 retary.” and inserting “only—

4 “(i) on approval by the Secretary of
5 plans, specifications, and estimates relating
6 to the projects; and

7 “(ii) in amounts directly proportional
8 to the actual need of each Indian reserva-
9 tion, as determined by the Secretary based
10 on the number of deficient bridges on each
11 reservation and the projected cost of reha-
12 bilitation of those bridges.”.

13 (d) FAIR AND EQUITABLE DISTRIBUTION.—Section
14 202(d) of title 23, United States Code, is amended by add-
15 ing at the end the following:

16 “(5) FAIR AND EQUITABLE DISTRIBUTION.—To
17 ensure that the distribution of funds to an Indian
18 tribe under this subsection is fair, equitable, and
19 based on valid transportation needs of the Indian
20 tribe, the Secretary shall—

21 “(A) verify the existence, as of the date of
22 the distribution, of all roads that are part of
23 the Indian reservation road system; and

24 “(B) distribute funds based only on those
25 roads.”.

1 (e) INDIAN RESERVATION ROAD PLANNING.—Sec-
2 tion 204(j) of title 23, United States Code, is amended
3 in the first sentence by striking “2 percent” and inserting
4 “4 percent”.

5 **SEC. 4. FEDERAL LANDS HIGHWAY PROGRAM DEMONSTRATION PROJECT.**
6

7 Section 202(d)(3) of title 23, United States Code, is
8 amended by adding at the end the following:

9 “(C) FEDERAL LANDS HIGHWAY PROGRAM
10 DEMONSTRATION PROJECT.—

11 “(i) IN GENERAL.—The Secretary
12 shall establish a demonstration project
13 under which all funds made available
14 under this title for Indian reservation
15 roads and for highway bridges located on
16 Indian reservation roads as provided for in
17 subparagraph (A) shall be made available,
18 on the request of an affected Indian tribal
19 government, to the Indian tribal govern-
20 ment for use in carrying out, in accordance
21 with the Indian Self-Determination and
22 Education Assistance Act (25 U.S.C. 450
23 et seq.), contracts and agreements for the
24 planning, research, engineering, and con-
25 struction described in that subparagraph.

1 “(ii) EXCLUSION OF AGENCY PARTICI-
2 PATION.—In accordance with subpara-
3 graph (B), all funds for Indian reservation
4 roads and for highway bridges located on
5 Indian reservation roads to which clause
6 (i) applies shall be paid without regard to
7 the organizational level at which the Fed-
8 eral lands highway program has previously
9 carried out the programs, functions, serv-
10 ices, or activities involved.

11 “(iii) SELECTION OF PARTICIPATING
12 TRIBES.—

13 “(I) PARTICIPANTS.—

14 “(aa) IN GENERAL.—For
15 each fiscal year, the Secretary
16 shall select 12 geographically di-
17 verse Indian tribes from the ap-
18 plicant pool described in sub-
19 clause (II) to participate in the
20 demonstration project carried out
21 under clause (i).

22 “(bb) CONSORTIA.—Two or
23 more Indian tribes that are oth-
24 erwise eligible to participate in a
25 program or activity to which this

1 title applies may form a consor-
2 tium to be considered as a single
3 tribe for the purpose of becoming
4 part of the applicant pool under
5 subclause (II).

6 “(cc) FUNDING.—An Indian
7 tribe participating in the pilot
8 program under this subpara-
9 graph shall receive funding in an
10 amount equal to the sum of the
11 funding that the Indian tribe
12 would otherwise receive in ac-
13 cordance with the funding for-
14 mula established under the other
15 provisions of this subsection, and
16 an additional percentage of that
17 amount equal to the percentage
18 of funds withheld during the ap-
19 plicable fiscal year for the road
20 program management costs of
21 the Bureau of Indian Affairs
22 under subsection (f)(1).

23 “(II) APPLICANT POOL.—The ap-
24 plicant pool described in this sub-

1 clause shall consist of each Indian
2 tribe (or consortium) that—

3 “(aa) has successfully com-
4 pleted the planning phase de-
5 scribed in subclause (III);

6 “(bb) has requested partici-
7 pation in the demonstration
8 project under this subparagraph
9 through the adoption of a resolu-
10 tion or other official action by
11 the tribal governing body; and

12 “(cc) has demonstrated fi-
13 nancial stability and financial
14 management capability in accord-
15 ance with subclause (III) during
16 the 3-fiscal year period imme-
17 diately preceding the fiscal year
18 for which participation under this
19 subparagraph is being requested.

20 “(III) CRITERIA FOR DETER-
21 MINING FINANCIAL STABILITY AND FI-
22 NANCIAL MANAGEMENT CAPACITY.—
23 For the purpose of subclause (II), evi-
24 dence that, during the 3-year period
25 referred to in subclause (II)(cc), an

1 Indian tribe had no uncorrected sig-
2 nificant and material audit exceptions
3 in the required annual audit of the In-
4 dian tribe's self-determination con-
5 tracts or self-governance funding
6 agreements with any Federal agency
7 shall be conclusive evidence of the re-
8 quired stability and capability.

9 “(IV) PLANNING PHASE.—

10 “(aa) IN GENERAL.—An In-
11 dian tribe (or consortium) re-
12 questing participation in the
13 demonstration project under this
14 subparagraph shall complete a
15 planning phase that shall include
16 legal and budgetary research and
17 internal tribal government and
18 organization preparation.

19 “(bb) ELIGIBILITY.—A tribe
20 (or consortium) described in item
21 (aa) shall be eligible to receive a
22 grant under this subclause to
23 plan and negotiate participation
24 in a project described in that
25 item.”.

1 **SEC. 5. TRIBAL TRANSPORTATION SAFETY PROGRAM.**

2 (a) IN GENERAL.—Chapter 4 of title 23, United
3 States Code, is amended by adding at the end the fol-
4 lowing:

5 **“§ 412. Tribal Transportation Safety Program**

6 “(a) DEFINITION OF INDIAN TRIBE.—In this section,
7 the term ‘Indian tribe’ has the meaning given the term
8 in section 4 of the Indian Self-Determination and Edu-
9 cation Assistance Act (25 U.S.C. 450b).

10 “(b) PROGRAM.—

11 “(1) IN GENERAL.—The Secretary shall carry
12 out a program to provide to eligible Indian tribes (as
13 determined by the Secretary) competitive grants for
14 use in establishing tribal transportation safety pro-
15 grams on—

16 “(A) Indian reservations; and

17 “(B) other land under the jurisdiction of
18 an Indian tribe.

19 “(2) USE OF FUNDS.—Funds from a grant pro-
20 vided under paragraph (1) may be used to carry out
21 a project or activity—

22 “(A) to prevent the operation of motor ve-
23 hicles by intoxicated individuals;

24 “(B) to promote increased seat belt use
25 rates;

1 “(C) to eliminate hazardous locations on,
2 or hazardous sections or elements of—

3 “(i) a public road;

4 “(ii) a public surface transportation
5 facility;

6 “(iii) a publicly-owned bicycle or pe-
7 destrian pathway or trail; or

8 “(iv) a traffic calming measure;

9 “(D) to eliminate hazards relating to rail-
10 way-highway crossings; or

11 “(E) to increase transportation safety by
12 any other means, as determined by the Sec-
13 retary.

14 “(c) FEDERAL SHARE.—The Federal share of the
15 cost of carrying out the program under this section shall
16 be 100 percent.

17 “(d) FUNDING.—Notwithstanding any other provi-
18 sion of law, there are authorized to be appropriated from
19 the Highway Trust Fund (other than the Mass Transit
20 Account) to carry out this section—

21 “(1) \$10,000,000 for each of fiscal years 2004
22 and 2005;

23 “(2) \$20,000,000 for each of fiscal years 2006
24 and 2007; and

1 “(3) \$30,000,000 for each of fiscal years 2008
2 and 2009.”.

3 (b) CONFORMING AMENDMENT.—The analysis for
4 chapter 4 of title 23, United States Code, is amended by
5 inserting after the item relating to section 411 the fol-
6 lowing:

“412. Tribal Transportation Safety Program.”.

7 **SEC. 6. INDIAN RESERVATION RURAL TRANSIT PROGRAM.**

8 Section 5311 of title 49, United States Code, is
9 amended by adding at the end the following:

10 “(k) INDIAN RESERVATION RURAL TRANSIT PRO-
11 GRAM.—

12 “(1) DEFINITION OF INDIAN TRIBE.—In this
13 subsection, the term ‘Indian tribe’ has the meaning
14 given the term in section 4 of the Indian Self-Deter-
15 mination and Education Assistance Act (25 U.S.C.
16 450b).

17 “(2) PROGRAM.—

18 “(A) IN GENERAL.—The Secretary of
19 Transportation shall establish and carry out a
20 program to provide competitive grants to Indian
21 tribes to establish rural transit programs on
22 reservations or other land under the jurisdiction
23 of the Indian tribes.

24 “(B) AMOUNT OF GRANTS.—The amount
25 of a grant provided to an Indian tribe under

1 subparagraph (A) shall be based on the need of
2 the Indian tribe, as determined by the Sec-
3 retary of Transportation.

4 “(3) FUNDING.—Notwithstanding any other
5 provision of law, for each fiscal year, of the amount
6 made available to carry out this section under sec-
7 tion 5338 for the fiscal year, the Secretary of Trans-
8 portation shall use \$20,000,000 to carry out this
9 subsection.”.

10 **SEC. 7. SENSE OF CONGRESS REGARDING INDIAN RES-**
11 **ERVATION ROADS.**

12 (a) FINDINGS.—Congress finds that—

13 (1) the maintenance of roads on Indian reserva-
14 tions is a responsibility of the Bureau of Indian Af-
15 fairs;

16 (2) amounts made available by the Federal
17 Government as of the date of enactment of this Act
18 for maintenance of roads on Indian reservations
19 under section 204(c) of title 23, United States Code,
20 comprise only 30 percent of the annual amount of
21 funding needed for maintenance of roads on Indian
22 reservations in the United States; and

23 (3) any amounts made available for construc-
24 tion of roads on Indian reservations will be wasted
25 if those roads are not properly maintained.

1 (b) SENSE OF CONGRESS.—It is the sense of Con-
2 gress that Congress should annually provide to the Bureau
3 of Indian Affairs such funding as is necessary to carry
4 out all maintenance of roads on Indian reservations in the
5 United States.

○