

## Calendar No. 284

108TH CONGRESS }  
*1st Session* }

SENATE

{ REPORT  
108-150

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AMENDING THE TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY  
TO MAKE CERTAIN AMENDMENTS WITH RESPECT TO INDIAN TRIBES,  
TO PROVIDE FOR TRAINING AND TECHNICAL ASSISTANCE TO NATIVE  
AMERICANS WHO ARE INTERESTED IN COMMERCIAL VEHICLE DRIVING  
AND FOR OTHER PURPOSES

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SEPTEMBER 22, 2003.—Ordered to be printed

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Mr. CAMPBELL, from the Committee on Indian Affairs,  
submitted the following

### R E P O R T

[To accompany S. 281]

The Committee on Indian Affairs, to which was referred the bill (S. 281) to amend the Transportation Equity Act for the 21st Century to make certain amendments with respect to Indian tribes to provide for training and technical assistance to Native Americans who are interested in commercial vehicle driving and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill (as amended) do pass.

#### PURPOSE

The purpose of S. 281 is to amend the Transportation Equity Act for the 21st Century, 23 U.S.C. 104, Pub. L. 105-178, to make certain amendments with respect to Indian tribes and for other purposes.

#### BACKGROUND

Nearly 3 percent of the land in the United States is held in trust by the Federal government for American Indians.<sup>1</sup> With over 54 million acres of land in control of the 562 Federally-recognized tribal governments in the United States, there are many Federal, tribal, state and local roads that cross Indian lands. The primary transportation system that provides access to and within Indian

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<sup>1</sup>Bureau of Indian Affairs, TEA-21 Reauthorization Resource Paper, Transportation Serving Native American Lands, May 2003, page 5.

reservations, Indian communities, and Alaska Native villages is the Indian Reservation Road System which covers 55,724 miles.<sup>2</sup>

An Indian reservation road is defined to include a public road that is located within or provides access to an Indian reservation or Indian trust land.<sup>3</sup> The Indian Reservation Road (IRR) program is implemented pursuant to the Federal Lands Highway Program (FLHP), 23 U.S.C. 204, and is jointly administered by the Bureau of Indian Affairs, (BIA) Division of Transportation and the Federal Lands Highway Program of the Federal Highway Administration (FHWA).

The purpose of the IRR program is to provide safe and adequate transportation and public road access to and within Indian reservations and other Indian lands. Roads and other physical infrastructure are key in assisting tribes in their efforts to attract and retain investment and promote economic development and self sufficiency.

Under present law, there are two categories of Indian reservation roads. The first category (BIA System) consists of nearly 24,000 miles of public roads that are owned and maintained by the Bureau of Indian Affairs. The second category (Non-BIA) consists of approximately 32,000 miles of roads that are maintained by a tribal, state, county or other local government and which provide the primary access to Indian reservations or traverse reservations or Indian lands.<sup>4</sup> Table 1 illustrates the various types and ownerships of reservation roads.

TABLE 1.—TYPE AND OWNERSHIP OF INDIAN RESERVATION ROADS

Public road ownership	Unimproved earth roads	Earth surface roads	Gravel surface roads	Paved surface roads	Total
BIA .....	7,882	7,398	2,779	6,054	24,112
Tribes .....	575	117	106	177	974
State .....	58	65	256	8,425	8,804
Urban .....	67	23	36	94	219
County .....	1,629	3,990	8,227	7,386	21,232
Other—BIA .....	63	47	0	23	133
Other Fed .....	70	34	28	89	221
Non-Govt. ....	134	51	16	47	248
<b>Total .....</b>	<b>10,477</b>	<b>11,724</b>	<b>11,447</b>	<b>22,296</b>	<b>55,943</b>

#### A. HISTORY OF THE INDIAN RESERVATION ROAD PROGRAM

The IRR program was established in 1928 to improve roads on Indian reservation lands that were not then eligible for Federal highway funding.

In 1930, the Secretary of Agriculture was authorized to cooperate with the individual state highway agencies and the Department of the Interior in the planning and building of Indian reservation roads. As a result, the BIA entered into an agreement with the Federal Highway Administration to plan and construct roads on Indian lands.

In 1951, Congress began appropriating funds for the maintenance of the BIA-owned roads in the annual Department of Interior appropriations bill.

<sup>2</sup>Id. at 9.

<sup>3</sup>Id.

<sup>4</sup>Id. at 10.

The Surface Transportation Assistance Act of 1982 Pub. L. 97-424, placed the IRR program under the jurisdiction of the Federal Lands Highway Program (FLHP) and allocated funds from the Highway Trust Fund. Since that time, the IRR program has been under the joint jurisdiction of the Department of Transportation and the BIA.

In 1991, Congress enacted the Intermodal Surface Transportation Efficiency Act (ISTEA), Pub. L. 102-240, and re-authorized the IRR program from 1991 through 1997. The ISTEA established a set-aside of Highway Bridge Replacement and Rehabilitation Program funds for IRR bridges.

In 1998, the Transportation Equity Act of the 21st Century (TEA-21), Pub. L. 105-178, re-authorized the IRR program, and authorized IRR funding levels at \$1.6 billion from fiscal years 1998 through 2003. TEA-21 also clarified that funds appropriated to the IRR program are available to tribal governments pursuant to the contracting and compacting provisions of the Indian Self-Determination and Education Act of 1975, Pub. L. 93-638, 25 U.S.C. 450 et seq.

#### B. THE NEED FOR IMPROVED INDIAN RESERVATION ROADS

As of 2003 over 66 percent of the IRR system contained unimproved earth and gravel roads.<sup>5</sup> In the 1990 Assessment of Conditions and Funding Options for Indian Reservation Roads Report, 11 percent of the 4,500 miles of BIA owned paved roads were in “good condition” and about 2 percent of the 2,400 miles of gravel road were in “good condition”.<sup>6</sup>

Currently, the IRR system is the most undeveloped road network in the United States.<sup>7</sup> As table 2 indicates, only 11.6 percent of the roads in the IRR system are classified as in good condition.<sup>8</sup>

TABLE 2.—CONDITION OF THE IRR TRANSPORTATION SYSTEM

[In percentage]

	Good	Fair	Poor
Paved .....	12	49	40
Gravel .....	6	26	68
Earth .....	26	4	70
Total .....	11.6	16.5	71.8

The poor quality of the vast majority of Indian reservation roads, including design, road surface, and safety barriers, keeps tribal members from jobs, education opportunities, and health care, and forces many members to leave their reservation communities in order to pursue jobs.

Many roads in the IRR system also have safety deficiencies. The annual fatality rate on Indian reservation roads is more than four

<sup>5</sup> Testimony of Mr. Arthur E. Hamilton, Associate Administrator for Federal Lands Highways Program, Federal Highway Administration, United States Department of Transportation before the United States Senate Committee on Indian Affairs hearing on proposals to amend the Indian Reservation Roads Program, June 4, 2003.

<sup>6</sup> Bureau of Indian Affairs TEA-21 Reauthorization Resource Paper, Transportation Serving Native American Lands, May 2003, Page 17.

<sup>7</sup> Hamilton Testimony at 1.

<sup>8</sup> Bureau of Indian Affairs TEA-21 Reauthorization Resource Paper, Transportation Serving Native American Lands, May 2003.

times the national average.<sup>9</sup> Most roads are typically one lane, unimproved earth roads with little or no signage, inadequate safety barriers, no drainage, and no shoulders.

There is an enormous and largely unmet need for transportation infrastructure on Indian reservation lands. Available information indicates that there is currently an estimated \$11.8 billion backlog of improvement needs for BIA and selected state and local IRR roads.<sup>10</sup> Poor transportation facilities have a devastating impact on Indian tribal services including emergency services, law enforcement, health care, and economic development.

In the history of the IRR program, reservation roads have not received the level of funding needed to improve their quality equivalent to non-Indian roads. Although reservation roads comprise nearly 3% of the Federal Aid Highway Program, less than 1% of Federal aid has been allocated to Indian roads. If the IRR program were to receive the nearly 2.63% of TEA-21 funding that represents the percentage of Indian reservation roads in the Federal highway system, the IRR program would have been fully funded at \$4.7 billion from fiscal years 1998–2003. The current IRR funding level is authorized at \$1.6 billion for fiscal years 1998–2003.

In addition to Indian reservation roads, bridges on Indian reservation lands need improvement. There are 777 BIA-owned bridges and 3,617 bridges owned by other entities but which are located on Indian reservation lands.<sup>11</sup> The average age of a bridge in the IRR system exceeds 40 years. Out of a total of 4,394 bridges on the IRR system, 1,069 12 bridges are either functionally or structurally deficient.<sup>12</sup> Table 3 illustrates the differences between the number of deficient bridges on Indian lands versus the number of deficient bridges that are under the jurisdiction of the various state governments.

One of the greatest needs in the Indian Reservation Road program is funding for road maintenance. In 1951 Congress began appropriating funds for maintenance of BIA owned roads in annual Department of Interior Appropriations Acts. Currently the BIA receives \$26 million annually for IRR maintenance. However the BIA estimates that 6 times the amount of funding currently available, or \$120 million, is needed to adequately maintain BIA roads per year.<sup>13</sup>

The road maintenance budget for the IRR program has in fact decreased in recent years. In 1990 the BIA road maintenance funding level was \$30.5 million per year. In fiscal year 2004 the funding level is \$26 million.<sup>14</sup>

TABLE 3.—NUMBER OF FEDERALLY RECOGNIZED INDIAN TRIBES AND IRR BRIDGES BY STATE

State	Number of tribes	Acres of Indian trust lands	Number of BIA and tribal bridges	Number of state, county bridges	Deficient BIA bridges in state	Deficient state, county bridges in state
AL .....	1	2,934	1	43	1	8
AK .....	223	1,140,410	5	95	3	25

<sup>9</sup> Testimony of Arthur Hamilton, June 4, 2003.

<sup>10</sup> BIA report, May 2003, page 17.

<sup>11</sup> *Id.* at 12.

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

<sup>13</sup> *Id.* at 22.

<sup>14</sup> *Id.*

TABLE 3.—NUMBER OF FEDERALLY RECOGNIZED INDIAN TRIBES AND IRR BRIDGES BY STATE—  
Continued

State	Number of tribes	Acres of Indian trust lands	Number of BIA and tribal bridges	Number of state, county bridges	Deficient BIA bridges in state	Deficient state, county bridges in state
AZ .....	21	20,627,740	216	529	64	21
CA .....	99	591,883	13	55	4	13
CO .....	2	800,294	9	67	0	16
CT .....	2	5,028	0	0	0	0
FL .....	2	165,267	7	79	6	0
ID .....	5	721,111	21	149	3	22
IA .....	3	7,271	3	29	1	7
KS .....	4	34,176	38	41	3	10
LA .....	4	2,528	1	11	1	3
ME .....	5	265,234	1	3	1	2
MA .....	1	467	0	1	0	0
MI .....	8	25,167	9	130	8	21
MN .....	6	1,025,932	10	0	1	0
MS .....	1	22,772	20	0	0	0
MT .....	7	5,384,824	79	422	18	64
NE .....	6	66,462	12	266	1	107
NV .....	18	1,228,021	6	53	2	4
NM .....	23	8,169,407	116	236	35	43
NY .....	7	53,188	0	48	0	12
NC .....	1	51,166	36	13	8	4
ND .....	7	864,967	3	70	0	7
OK .....	36	1,061,495	0	652	0	342
OR .....	10	796,572	21	39	8	6
RI .....	1	2,335	0	1	0	0
SC .....	1	720	0	0	0	0
SD .....	9	4,999,410	62	180	14	38
TX .....	3	5,250	0	1	0	0
UT .....	7	2,331,007	9	9	2	1
WA .....	26	2,602,094	37	266	5	66
WI .....	11	435,485	26	26	10	3
WY .....	2	1,888,236	16	104	1	25
Total .....	564	55,378,853	777	3,617	199	870

## C. ALTERNATIVE RESERVATION TRANSPORTATION SYSTEMS

As of 2003, 6% of all Federally-recognized tribes in the United States operate public transit systems on behalf of their members.<sup>15</sup> Though 32 tribes currently operate public transit programs, nationwide the transit needs of tribal members are not being met. Tribes receive less than \$3 million per year for transit from Federal transit programs.<sup>16</sup>

Currently Congress does not provide dedicated Federal funding for tribal transit needs. Instead tribes apply to the states in order to obtain Federal transit funds. Therefore the Committee has included a provision in the bill to establish the Indian Reservation Rural Transit Program. This program creates a dedicated funding source for transit funding to be exclusively used by tribes.

In proposing amendments to the Transportation Equity Act for the 21st Century, 112 Stat. 112, 23 U.S.C. 104, Pub. L. 105-178 (“The Act”), the Committee is aware of the decision of the U.S. Circuit of Appeals for the Ninth Circuit in the case entitled *McDonald v. Means*, 309 F.3d 530 (9th Cir. 2002), in which the court held that a tribal court had jurisdiction to adjudicate a personal injury

<sup>15</sup> Id at 18.

<sup>16</sup> Id.

claim asserted by a tribal member for injuries received when a car in which the tribal member-plaintiff was driving on a Bureau of Indian Affairs road within the tribe's reservation struck a horse owned by a non-member-defendant who operated a horse ranching operation on fee land located within the reservation. As with the Bureau of Indian Affairs road at issue in *McDonald*, Federal support of road construction pursuant to the Act is not intended to diminish tribal jurisdiction.

#### LEGISLATIVE HISTORY

The Indian Tribal Surface Transportation Act of 2003 (S. 281) was introduced on February 4, 2003 by Senator Campbell, for himself and for Senator Inouye. Senator Domenici was later added as a co-sponsor. A Legislative Hearing was held on the bill on June 4, 2003. On June 26, 2003, the Committee convened a business meeting to consider S. 281 and other measures that had been referred to it, and on that date, the Committee favorably reported a substitute amendment to S. 281.

#### COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

On June 26, 2003, the Committee on Indian Affairs, in an open business session, adopted an amendment in the nature of a substitute to S. 281 by voice vote and ordered the bill, as amended, reported favorably to the Senate.

#### SECTION-BY-SECTION ANALYSIS OF THE SUBSTITUTE AMENDMENT

As introduced, S. 281 makes amendments to the Transportation Equity Act for the 21st Century 23 U.S.C. 104, Pub. L. 105-178 to make certain amendments with respect to Indian tribes and for other purposes. A section-by-section description of the changes contained in the substitute amendment follows.

##### *Section 1. Short title; table of contents*

This Act may be cited as the Indian Tribal Surface Transportation Improvement Act of 2003.

##### *Sec. 2. Definitions*

Terms defined in this section include "commercial vehicle driving", "Indian lands", "Indian reservation", "Indian tribe", "Secretary", and "Tribal transportation facility".

##### *Sec. 3. Funding for Indian reservation roads program*

Current funding for the Indian Reservation Roads program is \$275 million in FY2003. Section 3 authorizes an appropriation of \$330 million in FY2004 which graduates to \$550 million by FY2009, a 63% increase.

##### *Sec. 4. Obligation ceiling*

This section removes the obligation limitation from the Indian Reservation Roads program so that all funds authorized under TEA-21 would be available for appropriation.

*Sec. 5. Tribal contracting demonstration project*

Section 5 establishes a Demonstration Project for 15 tribes to contract or compact directly with the Federal Highway Administration for Indian Reservation Road projects pursuant to 25 U.S.C. 450 et seq. Tribes must demonstrate financial and management capacity in the previous three years to qualify for the Demonstration Project. The Secretary is responsible for submitting a report to Congress describing the implementation of the Demonstration Project and any recommendations for improving the Project.

The Committee included a requirement that any tribe participating in the demonstration project first complete a planning phase to help assure sufficient tribal capacity; however the Committee notes that a tribe shall be deemed to have previously completed the planning phase if it has previously participated in the administration of programs under the self-governance authorities of Public Law 93-638 (Titles III, IV and V).

*Sec. 6. Indian reservation bridges*

This section authorizes appropriations for the Indian Reservation Road Bridge Program and includes authorization for funds to be used in planning, design, engineering, pre-construction, construction, and inspection of bridges.

*Sec. 7. Indian reservation road planning*

This section authorizes an increase from 2% to 5% of each tribe's funding allocation for transportation planning services.

*Sec. 8. Tribal-State road maintenance agreements*

This section authorizes states and tribes to enter into road maintenance agreements to permit tribes to assume state responsibilities for Indian reservation roads and roads that provide access to Indian reservation roads.

*Sec. 9. Alaska Native village transportation program*

Section 9 creates an "Alaska Native Regional Transportation Program" responsible for establishing a comprehensive tribal transportation plan for the region and ensure that transportation projects are built.

*Sec. 10. Indian reservation road safety program*

Section 10 authorizes a new section 412 of Title 23 to be known as the "Tribal Transportation Safety Program" comprised of a competitive grant program for tribes to establish or expand transportation safety programs on reservation lands.

*Sec. 11. Indian reservation rural transit program*

This section authorizes annual appropriations of \$15 million for a transit grant program. Eligibility would be based on tribal need as determined by the Secretary.

*Sec. 12. Commercial vehicle driving training program*

Section 12 authorizes the Secretary of Labor to award competitive grants to eligible tribal colleges and universities to provide training and certification of commercial vehicle driving and other vehicles that require a commercial drivers license.

## COST AND BUDGETARY CONSIDERATION

The cost estimate for S. 281 as calculated by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, July 17, 2003.*

Hon. BEN NIGHTHORSE CAMPBELL,  
*Chairman, Committee on Indian Affairs,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 281, the Indian Tribal Surface Transportation Improvement Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Rachael Milberg.

Sincerely,

DOUGLAS HOLTZ-EAKIN,  
*Director.*

Enclosure.

*S. 281—Indian Tribal Surface Transportation Improvement Act of 2003*

Summary: The Department of Transportation (DOT) provides grants to tribal governments for improving roads and bridges that serve Indian lands. S. 281 would extend the authority to conduct those programs for the next six years. The bill also would establish three new grant programs for creating transit programs on Indian lands, improving the safety of roads on Indian lands, and preparing Native Americans to drive commercial vehicles.

For the road and bridge programs, S. 281 would provide \$2.7 billion in contract authority, the authority to incur obligations in advance of appropriations, over the 2004–2009 period. That funding would represent an increase of \$1.05 billion above the contract authority assumed for those programs over that period in CBO's baseline. S. 281 would provide another \$138 million in contract authority over the 2004–2009 period for the new transit and safety programs. CBO expects, however, that spending for all four programs would be controlled by limits on annual obligations set in appropriation acts. S. 281 would authorize the appropriation of \$30 million in regular budget authority over the 2004–2009 period for the training program.

Assuming appropriation action consistent with the obligation and authorization levels specified in S. 281, CBO estimates that implementing the bill would result in discretionary outlays of \$791 million over the 2004–2008 period and \$427 million after 2008. Enacting S. 281 would not affect outlays from direct spending or revenues.

S. 281 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments. Any costs to tribal organizations to participate in the demonstration project and grant programs would be incurred voluntarily.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 281 is shown in the following table. The costs of this legislation fall within budget function 400 (transportation).

	By fiscal year, in millions of dollars—						
	2003	2004	2005	2006	2007	2008	2009
SPENDING SUBJECT TO APPROPRIATION							
DOT Spending Under Current Law for Indian Roads and Bridges:							
Budget Authority .....	0	0	0	0	0	0	0
Estimated Outlays <sup>1</sup> .....	241	268	275	275	275	275	275
Proposed Changes:							
Authorization Level .....	0	5	5	5	5	5	5
Estimated Outlays .....	0	50	106	154	214	267	319
Spending Under S. 281 for Indian Roads and Bridges and New Programs:							
Authorization Level .....	0	5	5	5	5	5	5
Estimated Outlays <sup>1</sup> .....	241	318	381	429	489	542	594
DIRECT SPENDING							
Baseline Spending for Indian Roads and Bridges:							
Budget Authority <sup>2</sup> .....	275	275	275	275	275	275	275
Estimated Outlays .....	0	0	0	0	0	0	0
Proposed Changes:							
Budget Authority .....	0	91	91	189	189	314	314
Estimated Outlays .....	0	0	0	0	0	0	0
Spending Under S. 281 for Indian Roads and Bridges and New Programs:							
Budget Authority <sup>2</sup> .....	275	366	366	464	464	589	589
Estimated Outlays .....	0	0	0	0	0	0	0

<sup>1</sup> Estimated outlays under current law are from the obligation limitations for the Department of Transportation's Indian road and bridge programs, as assumed to continue in CBO's baseline.

<sup>2</sup> Budget authority for the Indian road and bridge programs is provided as contract authority, a mandatory form of budget authority; however, outlays from those programs are subject to obligation limitations contained in appropriation acts and are therefore discretionary. S. 281 would provide contract authority for two new programs for improving the safety of roads and creating transit programs on Indian lands. CBO expects this contract authority also would be subject to obligation limitations in appropriation acts.

**Basis of estimate:** For this estimate, CBO assumes that S. 281 will be enacted in fiscal year 2003. Estimates of outlays are based on historical spending patterns of the Indian road and bridge programs as well as information from the Federal Highway Administration.

#### *Indian road and bridge programs*

S. 281 would provide \$2.7 billion in contract authority over the 2004–2009 period for DOT's Indian road and bridge programs. Consistent with section 257 of the Balanced Budget and Emergency Deficit Control Act, which specifies that certain expiring programs should be assumed to continue for budget projection purposes, CBO's baseline projections assume that contract authority for those programs will total \$1.65 billion over the 2004–2009 period. Thus, S. 281 would provide \$1.05 billion in contract authority above the baseline levels over the 2004–2009 period.

Under current law, DOT administers the Indian road and bridge programs as part of the Federal-Aid Highways program, and spending on the two programs is controlled by annual limitations on Federal-Aid obligations set in appropriation acts. Those limitations are often less than the total amount of contract authority for the programs. For this reason, the Federal Government has obligated an average of 88 percent of the contract authority for the road and bridge programs each year over the 1998–2002 period. S. 281 would change how the Federal-Aid obligation limitation is ap-

plied so as to provide those programs with obligation authority equal to 100 percent of the contract authority provided each year.

CBO estimates that spending from the increase in contract authority for Indian road and bridge programs would total \$665 million over the 2004–2008 period and \$385 million after 2008.

#### *Transit and safety programs*

Over the 2004–2009 period, S. 281 would provide \$48 million in contract authority for the new transit program and another \$90 million in contract authority for the new safety program.

CBO expects the contract authority for the transit and safety programs would be subject to obligation limitations in appropriation acts. S. 281 would authorize the new transit program by amending section 5311 of the United States Code. Recent appropriation acts include obligation limitations that control spending under this section of the code, and CBO expects that such limitations would continue to apply to the entire section, including the new transit program. Recent appropriation acts also include obligation limitations for every highway safety program that receives contract authority, and CBO expects this policy would continue for the new safety program that S. 281 would authorize.

Assuming appropriation acts provide obligation authority equal to the levels of contract authority that S. 281 would provide for the new transit and safety programs, CBO estimates that implementing these programs would cost \$104 million over the 2004–2008 period and another \$34 million after 2008.

#### *Training program*

For the training program, S. 281 would authorize the appropriation of \$5 million for each year over the 2004–2009 period. Assuming appropriation of the authorized amounts, CBO estimates that implementing the new training program would cost \$22 million over the 2004–2008 period and another \$8 million after 2008.

Intergovernmental and private-sector impact: S. 281 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. Any costs to tribal organizations to participate in the demonstration project and grant programs would be incurred voluntarily.

Estimate prepared by: Federal Costs: Rachel Milberg; Impact on State, Local, and Tribal Governments: Greg Waring; and Impact on the Private Sector: Cecil McPherson.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

### REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate the regulatory paperwork impact that would be incurred in implementing the legislation. The Committee has concluded that enactment of S. 281 will create only de minimis regulatory or paperwork burdens.

### EXECUTIVE COMMUNICATIONS

The Committee has received no official communication from the Administration on the provisions of the bill.

## CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the enactment of S. 281 will result in the following changes in 23 U.S.C. Sec. 101 et seq., (with existing law proposed to be omitted enclosed in black brackets and the new language to be added in italic):

**23 U.S.C. 101(a)**

(a) DEFINITIONS.—In this title, the following definitions apply:

(1) APPORTIONMENT.—The term “apportionment” includes unexpended apportionments made under prior authorization laws.

(2) CARPOOL PROJECT.—The term “carpool project” means any project to encourage the use of carpools and vanpools, including provision of carpooling opportunities to the elderly and individuals with disabilities, systems for locating potential riders and informing them of carpool opportunities, acquiring vehicles for carpool use, designating existing highway lanes as preferential carpool highway lanes, providing related traffic control devices, and designating existing facilities for use for preferential parking for carpools.

(3) CONSTRUCTION.—The term “construction” means the supervising, inspecting, actual building, and incurrence of all costs incidental to the construction or reconstruction of a highway, including bond costs and other costs relating to the issuance in accordance with section 122 of bonds or other debt financing instruments and costs incurred by the State in performing Federal-aid project related audits that directly benefit the Federal-aid highway program. Such term includes—

(A) locating, surveying, and mapping (including the establishment of temporary and permanent geodetic markers in accordance with specifications of the National Oceanic and Atmospheric Administration of the Department of Commerce);

(B) resurfacing, restoration, and rehabilitation;

(C) acquisition of rights-of-way;

(D) relocation assistance, acquisition of replacement housing sites, and acquisition and rehabilitation, relocation, and construction of replacement housing;

(E) elimination of hazards of railway grade crossings;

(F) elimination of roadside obstacles;

(G) improvements that directly facilitate and control traffic flow, such as grade separation of intersections, widening of lanes, channelization of traffic, traffic control systems, and passenger loading and unloading areas; and

(H) capital improvements that directly facilitate an effective vehicle weight enforcement program, such as scales (fixed and portable), scale pits, scale installation, and scale houses.

(4) COUNTY.—The term “county” includes corresponding units of government under any other name in States that do not have county organizations and, in those States in which the county government does not have jurisdiction over high-

ways, any local government unit vested with jurisdiction over local highways.

(5) FEDERAL-AID HIGHWAY.—The term “Federal-aid highway” means a highway eligible for assistance under this chapter other than a highway classified as a local road or rural minor collector.

(6) FEDERAL-AID SYSTEM.—The term “Federal-aid system” means any of the Federal-aid highway systems described in section 103.

(7) FEDERAL LANDS HIGHWAY.—The term “Federal lands highway” means a forest highway, public lands highway, park road, parkway, refuge road, and Indian reservation road that is a public road.

(8) FOREST DEVELOPMENT ROADS AND TRAILS.—The term “forest development roads and trails” means forest roads and trails under the jurisdiction of the Forest Service.

(9) FOREST HIGHWAY.—The term “forest highway” means a forest road under the jurisdiction of, and maintained by, a public authority and open to public travel.

(10) FOREST ROAD OR TRAIL.—The term “forest road or trail” means a road or trail wholly or partly within, or adjacent to, and serving the National Forest System that is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources.

(11) HIGHWAY.—The term “highway” includes—

(A) a road, street, and parkway;

(B) a right-of-way, bridge, railroad-highway crossing, tunnel, drainage structure, sign, guardrail, and protective structure, in connection with a highway; and

(C) a portion of any interstate or international bridge or tunnel and the approaches thereto, the cost of which is assumed by a State transportation department, including such facilities as may be required by the United States Customs and Immigration Services in connection with the operation of an international bridge or tunnel.

(12) INDIAN RESERVATION LAND.—*The term “Indian land” means—*

(A) *any land located within the boundaries of an Indian reservation, pueblo, or rancharia;*

(B) *any land not located within the boundaries of an Indian reservation, pueblo, or rancharia, the title to which is held—*

*(i) in trust by the United States for the benefit of an Indian tribe;*

*(ii) by an Indian tribe, subject to restriction by the United States against alienation; or*

*(iii) by a dependent Indian community; and*

(C) *land conveyed as part of an original conveyance to a Native Corporation in accordance with the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).*

(13) INDIAN RESERVATION.—*The term “Indian reservation” includes—*

(A) *an Indian reservation in existence as of the date of enactment of the Indian Tribal Surface Transportation Improvement Act of 2003;*

(B) a public domain Indian allotment;

(C) a former reservation in the State of Oklahoma;

(D) a parcel of land conveyed as part of an original conveyance to a native Corporation in accordance with the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.); and

(E) a dependent Indian community located within the borders of the United States regardless of whether the community is located—

(i) on original or acquired territory of the community or

(ii) within or outside the boundaries of any particular State.

**[12]** (14) INDIAN RESERVATION ROAD.—The term “Indian reservation road” means a public road that is located within or provides access to an Indian reservation or Indian trust land or restricted Indian land that is not subject to fee title alienation without the approval of the Federal Government, or Indian and Alaska Native villages, groups, or communities in which Indians and Alaskan Natives reside, whom the Secretary of the Interior has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians.

(15) INDIAN TRIBE.—The Term “Indian Tribe” has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

**[13]** (16) INTERSTATE SYSTEM.—The term “Interstate System” means the Dwight D. Eisenhower National System of Interstate and Defense Highways described in section 103(c).

**[14]** (17) MAINTENANCE.—The term “maintenance” means the preservation of the entire highway, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for safe and efficient utilization of the highway.

**[15]** (18) MAINTENANCE AREA.—The term “maintenance area” means an area that was designated as a nonattainment area, but was later redesignated by the Administrator of the Environmental Protection Agency as an attainment area, under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)).

**[16]** (19) NATIONAL HIGHWAY SYSTEM.—The term “National Highway System” means the Federal-aid highway system described in section 103(b).

**[17]** (20) OPERATING COSTS FOR TRAFFIC MONITORING, MANAGEMENT, AND CONTROL.—The term “operating costs for traffic monitoring, management, and control” includes labor costs, administrative costs, costs of utilities and rent, and other costs associated with the continuous operation of traffic control, such as integrated traffic control systems, incident management programs, and traffic control centers.

**[18]** (21) OPERATIONAL IMPROVEMENT.—The term “operational improvement”—

(A) means

(i) a capital improvement for installation of traffic surveillance and control equipment, computerized signal systems, motorist information systems, integrated

traffic control systems, incident management programs, and transportation demand management facilities, strategies, and programs, and

(ii) such other capital improvements to public roads as the Secretary may designate, by regulation; and

(B) does not include resurfacing, restoring, or rehabilitating improvements, construction of additional lanes, interchanges, and grade separations, and construction of a new facility on a new location.

**[19]** (22) PARK ROAD.—The term “park road” means a public road, including a bridge built primarily for pedestrian use, but with capacity for use by emergency vehicles, that is located within, or provides access to, an area in the National Park System with title and maintenance responsibilities vested in the United States.

**[20]** (23) PARKWAY.—The term “parkway” as used in chapter 2 of this title, means a parkway authorized by Act of Congress on lands to which title is vested in the United States.

**[21]** (24) PROJECT.—The term “project” means an undertaking to construct a particular portion of a highway, or if the context so implies, the particular portion of a highway so constructed or any other undertaking eligible for assistance under this title.

**[22]** (25) PROJECT AGREEMENT.—The term “project agreement” means the formal instrument to be executed by the State transportation department and the Secretary as required by section 106.

**[23]** (26) PUBLIC AUTHORITY.—The term “public authority” means a Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality with authority to finance, build, operate, or maintain toll or toll-free facilities.

**[24]** (27) PUBLIC LANDS DEVELOPMENT ROADS AND TRAILS.—The term “public lands development roads and trails” means those roads and trails that the Secretary of the Interior determines are of primary importance for the development, protection, administration, and utilization of public lands and resources under the control of the Secretary of the Interior.

**[25]** (28) PUBLIC LANDS HIGHWAY.—The term “public lands highway” means a forest road under the jurisdiction of and maintained by a public authority and open to public travel or any highway through unappropriated or unreserved public lands, nontaxable Indian lands, or other Federal reservations under the jurisdiction of and maintained by a public authority and open to public travel.

**[26]** (29) PUBLIC LANDS HIGHWAYS.—The term “public lands highways” means those main highways through unappropriated or unreserved public lands, nontaxable Indian lands, or other Federal reservations, which are on the Federal-aid systems.

**[27]** (30) PUBLIC ROAD.—The term “public road” means any road or street under the jurisdiction of and maintained by a public authority and open to public travel.

**[28]** (31) REFUGE ROAD.—The term “refuge road” means a public road that provides access to or within a unit of the Na-

tional Wildlife Refuge System and for which title and maintenance responsibility is vested in the United States Government.

**[29]** (32) RURAL AREAS.—The term “rural areas” means all areas of a State not included in urban areas.

**[30]** (33) SAFETY IMPROVEMENT PROJECT.—The term “safety improvement project” means a project that corrects or improves high hazard locations, eliminates roadside obstacles, improves highway signing and pavement marking, installs priority control systems for emergency vehicles at signalized intersections, installs or replaces emergency motorist aid call boxes, or installs traffic control or warning devices at locations with high accident potential.

**[31]** (34) SECRETARY.—The term Transportation “Secretary” means Secretary of Transportation.

**[32]** (35) STATE.—The term “State” means any of the 50 States, the District of Columbia, or Puerto Rico.

**[33]** (36) STATE FUNDS.—The term “State funds” includes funds raised under the authority of the State or any political or other subdivision thereof, and made available for expenditure under the direct control of the State transportation department.

**[34]** (37) STATE TRANSPORTATION DEPARTMENT.—The term “State transportation department” means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction.

**[35]** (38) TRANSPORTATION ENHANCEMENT ACTIVITIES.—The term “transportation enhancement activities” means, with respect to any project or the area to be served by the project, any of the following activities if such activity relates to surface transportation: provision of facilities for pedestrians and bicycles, provision of safety and educational activities for pedestrians and bicyclists, acquisition of scenic easements and scenic or historic sites, scenic or historic highway programs (including the provision of tourist and welcome center facilities), landscaping and other scenic beautification, historic preservation, rehabilitation and operation of historic transportation buildings, structures, or facilities (including historic railroad facilities and canals), preservation of abandoned railway corridors (including the conversion and use thereof for pedestrian or bicycle trails), control and removal of outdoor advertising, archaeological planning and research, environmental mitigation to address water pollution due to highway runoff or reduce vehicle-caused wildlife mortality while maintaining habitat connectivity, and establishment of transportation museums.

(39) TRIBAL TRANSPORTATION FACILITY.—*The term “tribal transportation facility” means any transportation-related project, facility, or physical infrastructure for an Indian tribe that is funded under this title.*

**[36]** (40) URBAN AREA.—The term “urban area” means an urbanized area or, in the case of an urbanized area encompassing more than one State, that part of the urbanized area in each such State, or urban place as designated by the Bureau of the Census having a population of 5,000 or more and not within any urbanized area, within boundaries to be fixed by re-

sponsible State and local officials in cooperation with each other, subject to approval by the Secretary. Such boundaries shall encompass, at a minimum, the entire urban place designated by the Bureau of the Census, except in the case of cities in the State of Maine and in the State of New Hampshire.

**[37]** (41) URBANIZED AREA.—The term “urbanized area” means an area with a population of 50,000 or more designated by the Bureau of the Census, within boundaries to be fixed by responsible State and local officials in cooperation with each other, subject to approval by the Secretary. Such boundaries shall encompass, at a minimum, the entire urbanized area within a State as designated by the Bureau of the Census.

(b) It is hereby declared to be in the national interest to accelerate the construction of the Federal-aid highway systems, including The Dwight D. Eisenhower System of Interstate and Defense Highways, since many of such highways, or portions thereof, are in fact inadequate to meet the needs of local and interstate commerce, for the national and civil defense.

It is hereby declared that the prompt and early completion of The Dwight D. Eisenhower System of Interstate and Defense Highways, so named because of its primary importance to the national defense and hereafter referred to as the “Interstate System”, is essential to the national interest and is one of the most important objectives of this Act. It is the intent of Congress that the Interstate System be completed as nearly as practicable over the period of availability of the forty years’ appropriations authorized for the purpose of expediting its construction, reconstruction, or improvement, inclusive of necessary tunnels and bridges, through the fiscal year ending September 30, 1996, under section 108(b) of the Federal-Aid Highway Act of 1956 (70 Stat. 374), and that the entire system in all States be brought to simultaneous completion. Insofar as possible in consonance with this objective, existing highways located on an interstate route shall be used to the extent that such use is practicable, suitable, and feasible, it being the intent that local needs, to the extent practicable, suitable, and feasible, shall be given equal consideration with the needs of interstate commerce.

It is further declared that since the Interstate System is now in the final phase of completion it shall be the national policy that increased emphasis be placed on the construction and reconstruction of the other Federal-aid systems in accordance with the first paragraph of this subsection, in order to bring all of the Federal-aid systems up to standards and to increase the safety of these systems to the maximum extent.

(c) It is the sense of Congress that under existing law no part of any sums authorized to be appropriated for expenditure upon any Federal-aid system which has been apportioned pursuant to the provisions of this title shall be impounded or withheld from obligation, for purposes and projects as provided in this title, by any officer or employee in the executive branch of the Federal Government, except such specific sums as may be determined by the Secretary of the Treasury, after consultation with the Secretary of Transportation, are necessary to be withheld from obligation for specific periods of time to assure that sufficient amounts will be

available in the Highway Trust Fund to defray the expenditures which will be required to be made from such fund.

(d) No funds authorized to be appropriated from the Highway Trust Fund shall be expended by or on behalf of any Federal department, agency, or instrumentality other than the Federal Highway Administration unless funds for such expenditure are identified and included as a line item in an appropriation Act and are to meet obligations of the United States heretofore or hereafter incurred under this title attributable to the construction of Federal-aid highways or highway planning, research, or development, or as otherwise specifically authorized to be appropriated from the Highway Trust Fund by Federal-aid highway legislation.

(e) It is the national policy that to the maximum extent possible the procedures to be utilized by the Secretary and all other affected heads of Federal departments, agencies, and instrumentalities for carrying out this title and any other provision of law relating to the Federal highway programs shall encourage the substantial minimization of paperwork and interagency decision procedures and the best use of available manpower and funds so as to prevent needless duplication and unnecessary delays at all levels of government.

## 112 Stat. 112

### Section 1101(a)(8)

#### (8) FEDERAL LANDS HIGHWAYS PROGRAM.—

(A) **INDIAN RESERVATION ROADS.**—For Indian reservation roads under section 204 of such title \$225,000,000 for fiscal year 1998 and \$275,000,000 for each of fiscal years 1999 through 2008. *Indian Reservation Roads.*—

(i) *IN GENERAL.*—Subject to clause (ii), for Indian reservation roads under section 204 of that title—

(I) \$330,000,000 for each of fiscal years 2004 through 2005

(II) \$425,000,000 for each of fiscal years 2006 through 2007

(III) \$550,000,000 for each of fiscal years 2008 through 2009.

(ii) *MAINTENANCE.*—Of the amounts made available for each fiscal year under clause (i), not less than \$50,000,000 shall be used—

(I) to maintain roads on Indian land; and

(II) to maintain tribal transportation facilities serving Indian communities.

## 112 Stat. 116

### OBLIGATION CEILING

(c) **DISTRIBUTION OF OBLIGATION AUTHORITY.**—For each of fiscal years 1998 through 2003, the Secretary shall—

(1) not distribute **[obligation]**

(A) *obligation* authority provided by subsection (a) for such fiscal year for amounts authorized for administrative expenses and programs funded from the administrative takedown authorized by section 104(a) of Title 23, United States Code, and amounts authorized for the highway use

tax evasion program and the Bureau of Transportation Statistics; and

*(B) for each of fiscal years 2004 through 2009, for any amount of obligation authority made available for Indian reservation road bridges under section 202(d)(4), and for Indian reservation roads under section 204, of title 23 United States Code.*

**23 U.S.C. 202(d)(3)**

**(3) CONTRACTS AND AGREEMENTS WITH INDIAN TRIBES.—**

**(A) IN GENERAL.**—Notwithstanding any other provision of law or any interagency agreement, program guideline, manual, or policy directive, all funds made available under this title for Indian reservation roads and for highway bridges located on Indian reservation roads to pay for the costs of programs, services, functions, and activities, or portions thereof, that are specifically or functionally related to the cost of planning, research, engineering, and construction of any highway, road, bridge, parkway, or transit facility that provides access to or is located within the reservation or community of an Indian tribe shall be made available, upon request of the Indian tribal government, to the Indian tribal government for contracts and agreements for such planning, research, engineering, and construction in accordance with the Indian Self-Determination and Education Assistance Act.

**(B) EXCLUSION OF AGENCY PARTICIPATION.**—Funds for programs, functions, services, or activities, or portions thereof, including supportive administrative functions that are otherwise contractible to which subparagraph (A) applies, shall be paid in accordance with subparagraph (A) without regard to the organizational level at which the Department of the Interior that has previously carried out such programs, functions, services, or activities.

**(C) FEDERAL LANDS HIGHWAY PROGRAM DEMONSTRATION PROJECT.**—

*(i) IN GENERAL.*—*The Secretary shall establish a demonstration project under which all funds made available under this chapter for Indian reservation roads and for highway bridges located on Indian reservation roads as provided for in subparagraph (A) shall be made available, on the request of an affected Indian tribal government, to the Indian tribal government for use in carrying out, in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b et seq.), contracts and agreements for the planning, research, engineering, and construction described in that subparagraph.*

*(ii) EXCLUSION OF AGENCY PARTICIPATION.*—*In accordance with subparagraph (B), all funds for Indian reservation roads and for highway bridges located on Indian reservation roads to which clause (i) applies shall be paid without regard to the organizational level at which the Federal lands highway program has pre-*

viously carried out the programs, functions, services, or activities involved.

(iii) SELECTION OF PARTICIPATING TRIBES.—

(I) PARTICIPANTS.—

(aa) IN GENERAL.—In addition to those Indian tribes or tribal organizations already contracting or compacting for any Indian reservation road function or program, for each fiscal year, the Secretary may select up to 15 Indian tribes from the applicant pool described in subclause (II) to participate in the demonstration project carried out under clause (i).

(bb) CONSORTIA.—Two or more Indian tribes that are otherwise eligible to participate in a program or activity to which this title applies may form a consortium to be considered as a single Indian tribe for the purpose of becoming part of the applicant pool under subclause (II).

(cc) FUNDING.—An Indian tribe participating in the pilot program under this subparagraph shall receive funding in an amount equal to the sum of the funding that the Indian tribe would otherwise receive in accordance with the funding formula established under the other provisions of this subsection, and an additional percentage of that amount equal to the percentage of funds withheld during the applicable fiscal year for the road program management costs of the Bureau of Indian Affairs under subsection (f)(1).

(II) APPLICANT POOL.—The applicant pool described in this subclause shall consist of each Indian tribe (or consortium) that—

(aa) has successfully completed the planning phase described in subclause (IV).

(bb) has requested participation in the demonstration project under this subparagraph through the adoption of a resolution or other official action by the tribal governing body; and

(cc) has demonstrated financial stability and financial management capability in accordance with subclause (III) during the 3-fiscal year period immediately preceding the fiscal year for which participation under this subparagraph is being requested.

(III) CRITERIA FOR DETERMINING FINANCIAL STABILITY AND FINANCIAL MANAGEMENT CAPACITY.—

For the purpose of subclause (II), evidence that, during the 3-year period referred to in subclause (II) (cc), an Indian tribe had no uncorrected significant and material audit exceptions in the required annual audit of the Indian tribe's self-determination contracts or self-governance funding

*agreements with any Federal agency shall be conclusive evidence of the required stability and capability.*

*(IV) PLANNING PHASE.—*

*(aa) IN GENERAL.—An Indian tribe (or consortium) requesting participation in the demonstration project under this subparagraph shall complete a planning phase that shall include legal and budgetary research and internal tribal government and organization preparation.*

*(bb) ELIGIBILITY.—A tribe (or consortium) described in item (aa) shall be eligible to receive a grant under this subclause to plan and negotiate participation in a project described in that item.*

*(V) REPORT TO CONGRESS.—Not later than September 30, 2006, the Secretary shall prepare and submit to Congress a report describing the implementation of the demonstration project and any recommendations for improving the project.*

**23 U.S.C. 202(d)(4)(B)**

**(4) RESERVATION OF FUNDS.—**

**(A) NATIONWIDE PRIORITY PROGRAM.—**The Secretary shall establish a nationwide priority program for improving deficient Indian reservation road bridges.

**[(B) RESERVATION.—**Of the amounts authorized to be appropriated for Indian reservation roads for each fiscal year, the Secretary, in cooperation with the Secretary of the Interior, shall reserve not less than \$13,000,000 for projects to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions or install scour countermeasures for deficient Indian reservation road bridges, including multiple-pipe culverts.]

**(B) FUNDING.—**

*(i) RESERVATION OF FUNDS.—Notwithstanding any other provision of law, there is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) \$15,000,000 for each of fiscal years 2004 through 2009 to carry out planning, design, engineering, preconstruction, construction, and inspection of projects to replace,*

*(ii) AVAILABILITY.—Funds made available to carry out this subparagraph—*

*(I) shall be available for obligation in the same manner as if the funds were Apportioned under chapter 1; and*

*(II) shall not be available to the Bureau of Indian Affairs to pay administrative costs.*

**(C) ELIGIBLE BRIDGES.—**To be eligible to receive funding under this subsection, a bridge described in subparagraph (A) must—

- (i) have an opening of 20 feet or more
- (ii) be on an Indian reservation road;
- (iii) be unsafe because of structural deficiencies, physical deterioration, or functional obsolescence; and
- (iv) be recorded in the national bridge inventory administered by the Secretary under subsection (b).

(D) APPROVAL REQUIREMENT.—Funds to carry out Indian reservation road bridge projects under this subsection shall be made available only on approval of plans, specifications, and estimates by the Secretary.

(e) REFUGE ROADS.—On October 1 of each year, the Secretary shall allocate the sums made available for that fiscal year for refuge roads according to the relative needs of the various refuges in the National Wildlife Refuge System, and taking into consideration—

- (1) the comprehensive conservation plan for each refuge;
- (2) the need for access as identified through land use planning; and
- (3) the impact of land use planning on existing transportation facilities.

(f) ADMINISTRATION OF INDIAN RESERVATION ROADS.—

(1) CONTRACT AUTHORITY.—

(A) IN GENERAL.—*Notwithstanding any other provision of law, for any fiscal year, not more than 6 percent of the contract authority amounts made available from the Highway Trust Fund to the Bureau of Indian Affairs under this title shall be used to pay the administrative expenses of the Bureau for the Indian reservation roads program (including the administrative expenses relating to individual projects that are associated with the program).*

(B) AVAILABILITY.—*Amounts made available to pay administrative expenses under subparagraph (A) shall be made available to an Indian tribal government, on the request of the government, to be used for the associated administrative functions assumed by the Indian tribe under contracts and agreements entered into under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b et seq.).*

(2) HEALTH AND SAFETY ASSURANCES.—*Notwithstanding any other provision of law, an Indian tribe or tribal organization may commence road and bridge construction under the Transportation Equity Act for the 21st Century (Public Law 105–178) or TEA–21 that is funded through a contract or agreement under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b et seq.) if the Indian tribe or tribal organization—*

(A) *provides assurances in the contract or agreement that the construction will meet or exceed applicable health and safety standards;*

(B) *obtains the advance review of the plans and specifications from a licensed professional that has certified that the plans and specifications meet or exceed the applicable health and safety standards; and*

(C) *provides a copy of the certification under subparagraph (B) to the Assistant Secretary for Indian Affairs.*

**23 U.S.C. 204(j)**

(j) INDIAN RESERVATION ROADS PLANNING.—Up to **[2]** 5 percent of funds made available for Indian reservation roads for each fiscal year shall be allocated to those Indian tribal governments applying for transportation planning pursuant to the provisions of the Indian Self-Determination and Education Assistance Act. The Indian tribal government, in cooperation with the Secretary of the Interior, and as appropriate, with a State, local government, or metropolitan planning organization, shall carry out a transportation improvement program and shall be subject to the approval of the Secretary of the Interior and the Secretary.

**23 U.S.C. 204**

(l) TRIBAL-STATE ROAD MAINTENANCE AGREEMENTS.—

(1) IN GENERAL.—*Notwithstanding any other provision of law, regulation, policy, or guideline, an Indian tribe and a State may enter into a road maintenance agreement under which an Indian tribe assumes the responsibilities of the State for—*

(A) *Indian reservation roads; and*

(B) *roads providing access to Indian reservation roads.*

(2) TRIBAL-STATE AGREEMENTS.—*Agreements entered into under paragraph (1)—*

(A) *shall be negotiated between the State and the Indian tribe; and*

(B) *shall not require the approval of the Secretary.*

(3) ANNUAL REPORT.—*Effective beginning with fiscal year 2004, the Secretary shall prepare and submit to Congress an annual report that identifies—*

(A) *the Indian tribes and States that have entered into agreements under paragraph (1);*

(B) *the number of miles of roads for which Indian tribes have assumed maintenance responsibilities; and*

(C) *the amount of funding transferred to Indian tribes for the fiscal year under agreements entered into under paragraph (1).*

**23 U.S.C. 204**

(m) ALASKA NATIVE VILLAGE TRANSPORTATION PROGRAM.—

(1) DEFINITIONS.—*In this subsection:*

(A) COMMISSION.—*The term “Commission” means the Alaska Native Transportation Commission established under paragraph (4)(A).*

(B) NATIVE.—*The term “Native” has the meaning given the term in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).*

(C) NATIVE AUTHORITY.—*The term “Native authority” means a governing board of a Regional Corporation, a regional Native non-profit entity, a tribal government, or an alternative regional entity that is designated by the Secretary as a native regional transportation authority under paragraph (3)(A).*

(D) *NATIVE VILLAGE.*—The term “Native Village” has the meaning given the term in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(E) *PROGRAM.*—The term “program means the Alaska Native village transportation program established under paragraph (2).

(F) *REGION.*—The term “region” means a region in the State specified in section 11(b)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(G) *REGIONAL CORPORATION.*—The term “Regional Corporation” has the meaning given the term in section 2 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(H) *STATE.*—The term “State” means the State of Alaska.

(2) *ESTABLISHMENT.*—The Secretary shall establish an Alaska Native village transportation program to pay the costs of planning, design, construction, and maintenance for road and other surface transportation facilities identified in accordance with this section.

(3) *ALASKA NATIVE REGIONAL TRANSPORTATION AUTHORITIES.*—

(A) *DESIGNATION.*—The Secretary shall designate a Native authority for each region.

(B) *RESPONSIBILITIES.*—A Native authority shall, with respect to each Native village or region, as appropriate, covered by the Native authority—

(i) prepare—

(I) a regional transportation plan for the Native village; and (II) a comprehensive transportation for the region;

(ii) prioritize and select projects to be funded with amounts made available under this section for the region;

(iii) coordinate transportation planning with other regions, the State, and other governmental entities; and

(iv) ensure that the transportation projects under this section are constructed and implemented.

(4) *ALASKA NATIVE TRANSPORTATION COMMISSION.*—

(A) *ESTABLISHMENT.*—As soon as practicable after the date of enactment of this subsection, the Secretary shall establish a commission, to be known as the “Statewide Alaska Native Transportation Commission”, consisting of 1 representative selected from each Native authority designated by the Secretary under Paragraph (3)(A) .

(B) *DUTIES.*—The Commission shall—

(i) allocate funds made available under this section among regions in accordance with paragraph (5) ;

(ii) coordinate transportation planning among the regions, the State, and other governmental entities; and

(iii) facilitate transportation projects involving 2 or more regions.

(5) *ALLOCATION OF FUNDING.*—

(A) *FISCAL YEAR 2004.*—Funds made available for the program for fiscal year 2004 shall be allocated to each region by the Secretary as follows:

(i) 50 percent of the funds shall be allocated based on the proportion that—

(I) the Native population of Native villages in the region; bears to

(II) the Native population of all Native villages in the State.

(ii) 50 percent of the funds shall be allocated as equally as practicable among all Native villages in the region.

(B) FISCAL YEAR 2005 AND SUBSEQUENT FISCAL YEARS.—Funds made available for the program for fiscal year 2005 and each fiscal year thereafter shall be allocated among regions by the Commission, in accordance with a formula to be developed by the Commission after taking into consideration—

(i) the health, safety, and economic needs of each region for transportation infrastructure, as identified through the regional planning process;

(ii) the relative costs of construction in each region; and

(iii) the extent to which transportation projects for each region are ready to proceed to design and construction.

(6) TRIBAL CONTRACTING.—Funds allocated among regions under this subsection may be contracted or compacted in accordance with the Indian Self Determination and Education Assistance Act (25 U.S.C. 450b et seq.).

(7) MATCHING FUNDS.—Notwithstanding any other provision of law, funds made available under this subsection may be used to pay a matching share required for receipt of any other Federal funds that would further a purpose for which allocations under this section are made.

(8) MAINTENANCE.—

(A) IN GENERAL.—At the request of a native authority or Native village, the Secretary may increase an amount of funds provided under this subsection for a construction project by an additional amount equal to 50% of the total cost of construction of the project, as determined by the Secretary.

(B) USE OF RETAINED FUNDS.—An increase in funds provided under subparagraph (A) for a construction project shall be retained, and used only, for future maintenance of the construction project.

## 23 U.S.C. 412

(a) PROGRAM.—

(1) IN GENERAL.—The Secretary shall carry out a program to provide to eligible Indian tribes (as determined by the Secretary) competitive grants for use in establishing tribal transportation safety programs on—

(A) Indian reservations; and

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

(2) USE OF FUNDS.—Funds from a grant provided under paragraph (1) may be used to carry out a project or activity—

- (A) to prevent the operation of motor vehicles by intoxicated individuals;
  - (B) to promote increased seat belt use rates;
  - (C) to eliminate hazardous locations and conditions on, or hazardous sections or elements of—
    - (i) a public road;
    - (ii) a public surface transportation facility;
    - (iii) a publicly-owned bicycle or pedestrian pathway or trail; or
    - (iv) a traffic calming measure;
  - (D) to eliminate hazards relating to railway-highway crossings; or
  - (E) to increase transportation safety by any other means, as determined by the Secretary.
- (b) **FEDERAL SHARE.**—The Federal share of the cost of carrying out the program under this section shall be 100 percent.
- (c) **FUNDING.**—Notwithstanding any other provision of law, there are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section—
- (1) \$6,000,000 for each of fiscal years 2004 and 2005; and
  - (2) \$9,000,000 for each of fiscal years 2006 through 2009.
- (d) **CONFORMING AMENDMENT.**—The analysis for chapter 4 of title 23, United States Code is amended by inserting after the item relating to section 411 the following:

“Indian reservation road safety program.”

#### 49 U.S.C. 5311

- (k) **INDIAN RESERVATION RURAL TRANSIT PROGRAM.**—
- (1) **IN GENERAL.**—The Secretary shall establish and carry out a program to provide competitive grant to Indian tribes to establish rural transit programs on reservations or other land under the jurisdiction of the Indian tribes.
  - (2) **AMOUNT OF GRANTS.**—The amount of a grant provided to an Indian tribe under subparagraph (A) shall be based on the need of the Indian tribe, as determined by the Secretary of Transportation.
  - (3) **AUTHORIZATION OF FUNDING.**—For each of fiscal years 2004 through 2009, of the amount made available under section 5338, \$15,000,000 shall be made available to carry out this subsection.