

**TESTIMONY OF
TERRY VIRDEN
DIRECTOR, BUREAU OF INDIAN AFFAIRS
ON THE
S. 281, INDIAN TRIBAL SURFACE TRANSPORTATION IMPROVEMENT ACT
AND THE
S. 725, TRIBAL TRANSPORTATION PROGRAM IMPROVEMENT ACT OF 2003
BEFORE THE COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE**

JUNE 4, 2003

Good morning, Mr. Chairman, Vice-Chairman and members of the Committee. I appear before you today to provide you with the Department's view on S.281, the "Indian Tribal Surface Transportation Act of 2003" and S. 725, the "Tribal Transportation Program Improvement Act of 2003".

Since enactment of Transportation Equity Act of the 21st Century (TEA-21), the federal investment in Bureau of Indian Affairs (BIA), tribal, state, county and local roads and bridges that comprise the Indian Reservation Roads (IRR) system has exceeded \$1.6 billion. This funding has contributed to the improvement of over 900 miles of roads and the replacement or rehabilitation of 76 deficient bridges on reservations per year.

Despite these efforts, there is still a great need for improving the transportation system in Indian country. Improved roads and bridges provide increased public safety and economic opportunities in Indian and Alaska Native communities. As this Committee is well aware, transportation networks in Indian and Alaska Native communities are critical for economic development stimulus by providing access to markets. In addition, safe roads are important when transporting people in rural areas to schools, local hospitals, and for delivering emergency services.

The IRR road system comprises over 60,000 miles of public roads with multiple owners, including Indian tribes, BIA, States and counties. Coordination among all of these owners is required to pool available resources.

The Administration's bill, S. 1072, the "Safe, Accountable, Flexible and Efficient Transportation Equity Act of 2003." (SAFETEA), authorizes nearly \$2 billion in funding for the IIR program over the next 6 years. The Department of Transportation worked very closely with us to accommodate our needs through this piece of legislation.

S. 281

S. 281 would amend the Transportation Equity Act for the 21st Century (TEA-21). The Department supports the objectives of S. 281 to improve roads on Indian reservations, but has concerns regarding certain aspects of this bill and would like to work with the Committee and suggest clarifications to the bill.

Obligation Ceiling

We strongly support eliminating the impact of the obligation limitation on the IRR program. The Administration's bill, SAFETEA, would provide obligation authority equal to contract authority so that all IRR funds authorized can be obligated. Under TEA-21, the IRR program received a proportional reduction of obligation limitation for new funds using the same ratio that is applied to State programs, resulting in a partial loss of authorized funds. Enactment of the SAFETEA provision would make available as much as an eleven percent increase in transportation related activities within the IRR program.

Demonstration Project

We support efforts to increase tribal involvement in the transportation programs, however the Bureau has some concerns with the language authorizing the demonstration project. First, this legislative language does not explicitly state that the Department of Transportation is eligible to contract with tribes pursuant to the Indian Self-Determination and Education Assistant Act. Explicit language clarifying (DOT) eligibility is necessary for implementation of this provision. Second, the demonstration project does not clarify which agency would be the "owner agency". Currently, the BIA is the facility owner and responsible agency for approximately 25,000 miles of roads identified on the IRR system. If the Committee moves forward with these provisions, we ask that you clarify which agency would be responsible for health and safety, and liability for any roads, bridges or other related projects built under this project.

Administration of Indian Reservation Roads

Under the current law, BIA has responsibility for oversight of the entire IRR program as well as certain specific responsibilities regarding individual road projects. The BIA has consistently used less than the 6% of IRR funding currently available to perform non-contractible, non-project related functions such as: developing and reviewing budgets and legislative proposals; processing all tribes' Transportation Improvement Programs (TIPs) for submission to the FHWA; preparing annual funding agreements; defending contract dispute actions; and providing technical assistance to all tribes, especially for project related administration and oversight including health and safety for direct service and ISDEAA tribes that depend on the BIA for all road activities.

The proposed change in the law would cap the BIA to no more than 6% for administration and oversight of *both* non-project related and project-related management and oversight. This would have the effect of drastically reducing resources available for direct service tribes.

Non-Project Related

The BIA has used program funds (not the 6%) to fund non-contractible project-related activities, such as: inspecting and accepting completed road projects (as required under PL 93-638); processing payments to contracting tribes; reviewing environmental, archeological

and historic preservation activities relating to contracted road projects; processing right-of-way acquisitions in preparation for road construction; reviewing PS&Es and conducting engineering and design activities where applicable, especially for direct service tribes.

Project Related

To illustrate, in FY 1999, the BIA obligated approximately \$43 million (about 25% of available IRR construction dollars) for project-related functions for all tribes, and of this amount about \$31 million was obligated for direct service tribes for engineering design, environmental compliance, historic preservation compliance, acquisition of rights-of-way, and assuring compliance with construction standards as required by Title 23. Of the 887 IRR projects requiring engineering design, 660 (75%) were designed by the BIA on behalf of direct service tribes. The proposed changes to the law in S. 281 would require the BIA to perform a similar number of engineering and design projects for direct service tribes with drastically reduced funding.

We think the proposed change is not necessary, because the BIA uses the 6% program management funds in a manner that ensures that all the Bureau's inherently federal functions are completed, and that direct service tribes are serviced from their project funds. Thus, it is only appropriate for the BIA to use project funds for oversight of ISDEAA tribal IRR projects to carry out BIA's responsibilities. *AB* the GAO noted in its letter to this Committee dated August 14, 2000, the BIA uses the funds consistent with the law and, in fact, the BIA over the last three years has responsibly limited the amount of funding for non-project program management to an amount less than the allowed six percent.

Health and Safety Assurances

Currently, the BIA reviews and approves plans, specifications and estimates (PS&E's) for IRR projects to ensure that construction of the projects will not jeopardize public health and safety. This is not uncommon in road construction for several reasons: 1) Title 23 U.S.C. requires that an approved PS&E is necessary before any public authority may proceed to construction, 2) the facility or the road owner has the responsibility to approve plans and specifications for the projects within its jurisdiction. The concern of the BIA has been that approval authority for the 37,000 miles of roads and bridges that are not the responsibility of the Secretary should be coordinated with those respective facility owners (county, state and other local government). In the last year, the BIA has worked with tribes within the individual contracts and agreements to provide for tribal approval of PS&E's on BIA roads (25,000 miles). The BIA believes this provision is unnecessary as changes within the soon to be published final IRR regulations will help to clearly define the roles and provide tribes under contracts or agreements the ability to approve plans, specifications and estimates.

Tribal Safety Incentive Grants and Transportation Safety Program

We support tribal eligibility for seat belt safety and intoxicated driver safety programs, as proposed in the Administration's bill. SAFETEA, calls for the consolidation of these programs under the National Highway Traffic Safety Administration's (NHTSA) section 402 program. The BIA will work with this Committee and the Secretary of Transportation on implementing any such provisions to support the success of these much needed safety initiatives.

Training and Technical Assistance for Native Americans

S. 281 establishes a Native American Commercial Driving Training and Technical Assistance Program for tribal colleges. The intent of this program is to encourage economic opportunities for tribal members. In addition, this training program would be conducted by tribal colleges and universities and provide them with value-added educational programs for their students. We support training programs for Native Americans and, as the Department of Transportation points out, such training is available. In fact, the United Tribes Technical College in Bismark, North Dakota participates in such a program.

S. 725

The Tribal Transportation Program Improvement Act of 2003 (S. 725) would improve delivery of services to the IRR program. S. 725 would authorize annual increases in the level of funding for the IRR program, with the ultimate funding amount at \$500 million. The Department supports the Administration's bill, which authorizes \$330 million annually for the IRR program. As previously discussed, the Department strongly supports eliminating the impact of the obligation limitation from the IRR program.

In addition S. 725 authorizes additional funding for the Indian Reservation Bridge Program. The Department, however, supports the funding of \$330 million annually provided for the IRR program, including the Indian Reservation Bridge Program, in SAFETEA.

Demonstration Project

We have the same concerns for the demonstration projects in S. 725 as we do for S. 281.

Tribal Safety Program

S. 725 creates a tribal specific transportation safety grant program that emphasizes intoxicated driver safety, the promotion of increased seat belt use, and the elimination of hazardous locations. The new program established under S. 725 would supplement existing safety grant programs and the IRR maintenance program. Under SAFETEA, NHTSA's section 402 programs would be consolidated and the BIA would be eligible for these types of safety grants under the consolidated section 402 program.

Indian Reservation Rural Transit Program

S. 725 establishes an Indian Reservation Rural Transit Program designed to provide competitive grants to Indian tribes to establish rural transit programs on reservations or other land under the jurisdiction of the Indian tribes. The Department supports the development of rural transit programs in Indian and Alaska Native communities, however we feel the provisions in SAFETEA better address tribal needs in the current economic environment.

Conclusion

Thank you for the opportunity to present the views of the Administration on this important issue. I will be happy to answer any questions you may have.