

Proposed new Section 419

“SEC. 419 APPLICABILITY OF THE ACT TO THE DEPARTMENT OF TRANSPORTATION

(a) The Secretary of the Department of Transportation shall carry out a program within the Department of Transportation to be known as the Tribal Transportation Self-Governance Program.

(b) Notwithstanding any other provision of law, the Secretary of Transportation shall enter into funding agreements under this title with any Tribe who elects to utilize the authority of this title to govern any funds made available to Indian tribes under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109-59) or successor authorities.

(c) Notwithstanding any other provision of law, the negotiation and implementation of each funding agreement entered into under this section shall be governed by the provisions of this title. “

Explanation for new Section 419

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) authorized tribal governments to receive funding from and participate in a number of Department of Transportation (DOT) programs as direct beneficiaries without having the Bureau of Indian Affairs or state governments acting as intermediaries. For example, section 1119(g)(4) of SAFETEA-LU [23 U.S.C. § 202(d)(5)] provides for tribal governments to enter into contracts and agreements directly with the Secretary of Transportation to undertake transportation functions "in accordance with the Self-Determination and Education Assistance Act ..." (ISDEAA). Some DOT Federal Highway Administration (FHWA) officials have interpreted this "in accordance with" language to somehow mean that FHWA-Tribe agreements under SAFETEA-LU *are not* ISDEAA agreements, and they have refused to include standard Title IV provisions in their agreements. This erroneous interpretation has sharply limited the number of FHWA-Tribe agreements that have been executed, and has generated a great deal of confusion and disagreement over the scope and extent of the applicability of Title IV to those agreements.

Section 419 will fix these problems by establishing a Tribal Transportation Self-Governance Program within the DOT. It directs DOT, upon the request of an Indian tribe, to enter into funding agreements under Title IV for any programs and funding made available to tribes by SAFETEA-LU. This section makes clear that the negotiation and implementation of those funding agreements will be governed by Title IV. Section 419 would echo existing authority in SAFETEA-LU and clarify in Title IV itself that Title IV applies to these DOT funds and programs.