



U.S. Department  
of Transportation  
Federal Highway  
Administration

# Memorandum

**Subject:** Section 122, STURAA of 1987 -  
Indian Employment Preference

**Date** May 8, 1987

**From:** Federal Highway Administrator

**Reply to**  
**Attn of.** HCC-50.7

**To:** Regional Administrators  
Regions 1-10  
Direct Federal Program Administrator

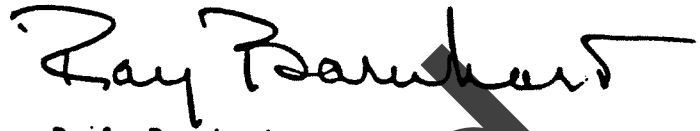
Section 122, Indian employment and contracting, Surface Transportation and Uniform Relocation Assistance Act (STURAA) of 1987, amended 23 U.S.C. § 140 (1982 and Supp. III) by adding subsection (d). This subsection now provides:

Consistent with section 703(i) of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-2(i)), nothing in this section shall preclude the preferential employment of Indians living on or near a reservation on projects and contracts on Indian reservation roads. The Secretary shall cooperate with Indian tribal governments and the States to implement this subsection.

Previous guidance concerning the agency's policy regarding the scope of states' implementation of Indian employment preference was set forth in my memorandum of February 1, 1985. Section 122 has negated the basis of that earlier memorandum as well as subsequent guidance.

The core provision of section 122 - "nothing in this section shall preclude the preferential employment of Indians living on or near a reservation on projects and contracts on Indian reservation roads" - is permissive, not mandatory. While states may include provisions allowing Indian employment preference in their highway contracts, section 122 does not mandate such provisions. Section 703(i) of the Civil Rights Act of 1964, allows preferential employment of Indians living on or near a reservation by businesses or enterprises on or near Indian reservations. This section applies to state and local government employment policies as well as private enterprise. The definition of "Indian reservation roads" as defined at 23 U.S.C. § 101 (1982) remains unchanged.

Section 122 may be fairly read to allow state laws, regulations, or policy permitting Indian employment preference on Indian reservation roads. Please assure that states and Indian tribal governments are made aware of this change in policy.



R. A. Barnhart

Archived