

HOUSE TRANSPORTATION COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 217

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

AN ACT

RELATING TO HIGHWAYS; PROVIDING TERMS AND CONDITIONS FOR  
CERTAIN RIGHT-OF-WAY AGREEMENTS; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of Chapter 11 NMSA 1978 is  
enacted to read:

"[NEW MATERIAL] LEGISLATIVE FINDINGS. -- The legislature  
finds that:

A. due to the United States supreme court decision  
in *Strate v. A-1 Contractors*, there is uncertainty in the  
allocation of jurisdiction between the state and a tribe  
within rights of way granted to the state by a tribe, and all  
future road projects through tribal land are put in jeopardy  
of being postponed, delayed or left unresolved;

B. New Mexico has entered into agreements with the

1 Navajo Nation through the state police and various counties to  
2 resolve issues of jurisdiction in law enforcement as well as  
3 many other areas;

4 C. New Mexico has traditionally negotiated right-  
5 of-way agreements for either a definite term or for the life  
6 of the highway;

7 D. the state land office has negotiated regarding  
8 easements permitted through state land, and the terms of those  
9 agreements are either for the life of the highway or for a  
10 fixed term that is not permitted to exceed thirty-five years;

11 E. the state highway and transportation department  
12 has negotiated and agreed to pay Indian nations for easements  
13 through Indian lands in the past;

14 F. New Mexico wants to foster and develop improved  
15 government-to-government relations between the Navajo Nation  
16 and the state; and

17 G. New Mexico desires to resolve the uncertainty  
18 presented by the *Strate* decision regarding jurisdiction within  
19 grants of rights of way by the Navajo Nation and to reconcile  
20 questions regarding the granting of rights of way through  
21 negotiation with the Navajo Nation. "

22 Section 2. A new section of Chapter 11 NMSA 1978 is  
23 enacted to read:

24 "[NEW MATERIAL] AGREEMENTS RELATING TO JURISDICTION ON  
25 HIGHWAYS AND RIGHTS OF WAY THROUGH NAVAJO NATION TRIBAL

1 LAND. --The agencies of the state that are involved in  
2 constructing highways, providing law enforcement or providing  
3 emergency services along the state highways that cross over  
4 Navajo Nation land shall initiate negotiations with the Navajo  
5 Nation for the purpose of entering into cooperative  
6 agreements, if none exist, to provide for:

7 A. the coordination of law enforcement and  
8 emergency services required to ensure the health and safety of  
9 travelers on the state highways on rights of way granted to  
10 the state highway and transportation department by the Navajo  
11 nation; and

12 B. the areas of shared jurisdiction between the  
13 various state agencies and the Navajo Nation, the areas of  
14 jurisdiction that are the sole responsibility of the state  
15 agency and the areas of jurisdiction that are the sole  
16 responsibility of the Navajo Nation regarding the provision of  
17 services in the rights of way granted to the state highway and  
18 transportation department by the Navajo Nation. "

19 Section 3. A new Section 67-3-71.1 NMSA 1978 is enacted  
20 to read:

21 "67-3-71.1. [NEW MATERIAL] RIGHT-OF-WAY AGREEMENTS--  
22 NAVAJO NATION--TERMS. --

23 A. When acquiring a right of way for a public  
24 highway from the Navajo Nation, the secretary or his designee  
25 shall negotiate the terms and conditions of the grant with a

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underscored material = new  
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1 person designated by the Navajo Nation. New Mexico and the  
2 Navajo Nation, as sovereign governments, are primarily  
3 interested in cooperating with one another and coordinating  
4 services and functions so that resources of the state and the  
5 Navajo Nation are used efficiently and to the greatest benefit  
6 of all persons traveling on the state and federal highways  
7 crossing the Navajo Nation. Right-of-way agreements shall be  
8 developed from negotiations between the Navajo Nation and the  
9 state, and shall include the following:

10 (1) the term of a right of way, which in no  
11 case shall be construed to be a perpetual easement or a grant  
12 in fee simple but may be a term that does not extend beyond  
13 the life of the state highway, as long as the right of way is  
14 used by the state highway and transportation department for  
15 constructing, maintaining, rehabilitating, operating or  
16 administering the public highway;

17 (2) the terms and conditions for closing the  
18 public highway in the event of emergency, for public safety  
19 purposes or for religious, ceremonial or cultural purposes;

20 (3) the authority of the state highway and  
21 transportation department regarding the assignment or grant of  
22 easements through the right of way;

23 (4) the manner and timeliness required of  
24 notice from either the state highway and transportation  
25 department or the Navajo Nation regarding the initiation of

1 negotiations to grant an easement to third parties or the  
 2 initiation of construction, expansion or removal of facilities  
 3 by or belonging to third parties within the easement;

4 (5) the terms and conditions regarding  
 5 consideration for the right-of-way grant;

6 (6) the method of dispute resolution that  
 7 will be used to resolve disputes arising between the state and  
 8 the Navajo Nation regarding the agreement or issues arising  
 9 from the implementation of the agreement;

10 (7) the areas of shared jurisdiction between  
 11 the state highway and transportation department and the Navajo  
 12 Nation, and the areas of jurisdiction that will be the sole  
 13 responsibility of the state highway and transportation  
 14 department or the Navajo Nation; and

15 (8) any other rights or responsibilities that  
 16 the state or the Navajo Nation believe should be appurtenant  
 17 to a grant of right of way by the Navajo Nation to the state  
 18 highway and transportation department.

19 B. The state highway and transportation department  
 20 shall negotiate the terms of the right-of-way agreement in  
 21 good faith with the Navajo Nation and shall make all attempts  
 22 to conclude the negotiations in a timely manner. If the state  
 23 highway and transportation department and the Navajo Nation  
 24 are unable to complete a right-of-way agreement within twelve  
 25 months from the date of first contact between the state

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1 highway and transportation department and the Navajo Nation  
2 requesting negotiations regarding a right-of-way agreement as  
3 evidenced by the date of a letter sent by either the Navajo  
4 Nation or the state highway and transportation department  
5 requesting negotiation regarding a particular right of way,  
6 the parties, unless they agree otherwise, shall engage  
7 mediators to help facilitate the process of reconciling the  
8 issues in dispute, at the shared expense of both parties  
9 unless the parties agree otherwise.

10 C. Nothing in a grant of right of way shall  
11 operate to diminish or be construed to operate to diminish the  
12 jurisdiction of the Navajo Nation over the right of way except  
13 as expressly provided in the grant of right of way to the  
14 department.

15 D. Nothing in a right-of-way agreement between the  
16 state highway and transportation department and the Navajo  
17 Nation shall be construed to be a waiver of the sovereign  
18 immunity of either the state or the Navajo Nation. "

19 Section 4. EMERGENCY.--It is necessary for the public  
20 peace, health and safety that this act take effect  
21 immediately.