

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 709

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

INTRODUCED BY

John Pinto

AN ACT

RELATING TO HIGHWAYS; PROVIDING TERMS 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 67-3-71.1 NMSA 1978 is enacted
to read:

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

A. The department, in acquiring highway rights of
way over lands owned by the Navajo Nation, in accordance with
the provisions of applicable federal law and rule, shall
accept a grant of a right of way by the secretary of the
interior to the department pursuant to Navajo Nation approval,
on the following terms and conditions:

- (1) the term of a right-of-way agreement

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 shall commence upon its issuance by the secretary of the
2 interior and extend for as long as the right of way is used
3 for constructing, maintaining, rehabilitating, operating and
4 administering a highway;

5 (2) the following rights are appurtenant to a
6 grant of a right of way:

7 (a) the right to design, construct,
8 maintain, rehabilitate, operate and administer the highway as
9 part of the state highway system;

10 (b) the right to manage access to and
11 from the highway and to issue driveway permits;

12 (c) the right to accommodate utilities
13 within the right of way; provided, that relocation of existing
14 utilities outside of existing right-of-way corridors for
15 utilities, and location of new utilities, shall require
16 amended or new grants of rights of way for the relocation or
17 location of new utilities in accordance with the provisions of
18 25 U. S. C. Section 323 and 25 C. F. R. Part 169, including
19 amendments or successor provisions to those provisions;

20 (d) the right to enter into appropriate
21 service line agreements with utility companies for the
22 provision of utility services to the right of way, including
23 gas, water, sewer, electricity, telephone, television and
24 other utilities, without further consent by the Navajo Nation,
25 on the condition that: 1) the agreement is for the sole

underscored material = new
[bracketed material] = delete

1 purpose of supplying utility services to the right of way; 2)
2 the agreement authorizes utility service lines only within the
3 right of way; 3) the term of the utility agreement does not
4 extend beyond the term of the right of way; 4) an executed
5 copy of the agreement, together with plats or diagrams showing
6 with particularity the location, size and extent of the
7 service lines, are filed by the state or the utility company
8 with the Navajo Nation and with the secretary of the interior
9 within thirty days of its execution; and 5) the agreement is
10 otherwise in accordance with the provisions of 25 C.F.R. Part
11 169.22, including amendments or successors to those
12 provisions;

13 (e) the right to install and maintain
14 traffic control devices and to take other reasonable traffic
15 safety measures;

16 (f) the right to set and post speed
17 limits;

18 (g) the right to require tolls for the
19 use of the highway;

20 (h) the right to close the highway and
21 issue permits for the temporary use of the highway by the
22 public; provided that the same right also is expressly
23 reserved to the Navajo Nation; and

24 (i) upon the state performing each of
25 the covenants, agreements, terms and conditions contained in

underscored material = new
[bracketed material] = delete

1 the grant of the right of way, the right to peaceably enjoy
2 the right of way and all rights appurtenant to the right of
3 way, in accordance with applicable federal law, without
4 hindrance, interruption, ejection or molestation by the Navajo
5 Nation or by any other person claiming to be an agent of or
6 claiming authority from the Navajo Nation;

7 (3) expressly reserved to the Navajo Nation
8 is full territorial, legislative, executive and judicial
9 jurisdiction over the right of way and all lands burdened by
10 the right of way, including:

11 (a) without limitation, all persons,
12 including the traveling public, within the right of way;

13 (b) all activities conducted or
14 otherwise occurring within the right of way;

15 (c) enforcement of speed limits set and
16 posted by the department;

17 (d) enforcement of Navajo Nation laws
18 applicable to the operation of motor vehicles; and

19 (e) adjudication of disputes arising
20 from motor vehicle accidents or other conduct or activities
21 occurring within the right of way;

22 (4) the right of way and all lands burdened
23 by the right of way are and forever remain Navajo Indian
24 country for purposes of Navajo Nation jurisdiction; and

25 (5) any other terms and conditions required

underscored material = new
[bracketed material] = delete

1 by applicable federal law or rule or are otherwise agreed upon
2 between the Navajo Nation and the department, that are not
3 inconsistent with the terms and conditions set forth in this
4 subsection or other applicable state or Navajo Nation law.

5 B. The department shall enter into amendments of
6 all existing grants of rights of way by the secretary of the
7 interior over lands owned by the Navajo Nation, with the
8 secretary of the interior, subject to all applicable federal
9 laws and rules, in order to provide that the rights of way are
10 in accordance with the terms and conditions of Subsection A of
11 this section. "