

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR  
SENATE BILL 709

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;

1           B. New Mexico has entered into agreements with the  
2 Navajo Nation through the state police and various counties to  
3 resolve issues of jurisdiction in law enforcement as well as  
4 many other areas;

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

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

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

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

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

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

1           " [NEW MATERIAL] AGREEMENTS RELATING TO JURISDICTION ON  
2 HIGHWAYS AND RIGHTS OF WAY THROUGH NAVAJO NATION TRIBAL LAND. --

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

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

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

21           Section 3. A new Section 67-3-71.1 NMSA 1978 is enacted  
22 to read:

23           "67-3-71.1. [NEW MATERIAL] RIGHT-OF-WAY AGREEMENTS--  
24 NAVAJO NATION--TERMS. --

25 . 137682. 4

underscored material = new  
[bracketed material] = delete

1           A. When acquiring a right of way for a public  
2 highway from the Navajo Nation, the secretary or his designee  
3 shall negotiate the terms and conditions of the grant with a  
4 person designated by the Navajo Nation. New Mexico and the  
5 Navajo Nation, as sovereign governments, are primarily  
6 interested in cooperating with one another and coordinating  
7 services and functions so that resources of the state and the  
8 Navajo Nation are used efficiently and to the greatest benefit  
9 of all persons traveling on the state and federal highways  
10 crossing the Navajo Nation. Right-of-way agreements shall be  
11 developed from negotiations between the Navajo Nation and the  
12 state, and shall include the following:

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

20                   (2) the terms and conditions for closing the  
21 public highway in the event of emergency, for public safety  
22 purposes or for religious, ceremonial or cultural purposes;

23                   (3) the authority of the state highway and  
24 transportation department regarding the assignment or grant of  
25

underscored material = new  
[bracketed material] = delete

1 easements through the right of way;

2 (4) the manner and timeliness required of  
3 notice from either the state highway and transportation  
4 department or the Navajo Nation regarding the initiation of  
5 negotiations to grant an easement to third parties or the  
6 initiation of construction, expansion or removal of facilities  
7 by or belonging to third parties within the easement;

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

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

14 (7) the areas of shared jurisdiction between  
15 the state highway and transportation department and the Navajo  
16 Nation, and the areas of jurisdiction that will be the sole  
17 responsibility of the state highway and transportation  
18 department or the Navajo Nation; and

19 (8) any other rights or responsibilities that  
20 the state or the Navajo Nation believe should be appurtenant to  
21 a grant of right of way by the Navajo Nation to the state  
22 highway and transportation department.

23 B. The state highway and transportation department  
24 shall negotiate the terms of the right-of-way agreement in good  
25

1 faith with the Navajo Nation and shall make all attempts to  
2 conclude the negotiations in a timely manner. If the state  
3 highway and transportation department and the Navajo Nation are  
4 unable to complete a right-of-way agreement within twelve  
5 months from the date of first contact between the state highway  
6 and transportation department and the Navajo Nation requesting  
7 negotiations regarding a right-of-way agreement as evidenced by  
8 the date of a letter sent by either the Navajo Nation or the  
9 state highway and transportation department requesting  
10 negotiation regarding a particular right of way, the parties  
11 shall engage mediators to help facilitate the process of  
12 reconciling the issues in dispute, at the shared expense of  
13 both parties unless the parties agree otherwise.

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

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