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SENATE BILL 810

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

INTRODUCED BY

Leonard Tsosie

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

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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

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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

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

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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. "